

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROADSYNC, INC.,)
)
Plaintiff,)
v.) CIVIL ACTION
) FILE NO. 1:21-CV-03420-MLB
)
RELAY PAYMENTS, INC. ET AL,)
)
Defendants.)
_____)

BEFORE THE HONORABLE MICHAEL L. BROWN
TRANSCRIPT OF PROCEEDINGS
JANUARY 11, 2023

Proceedings recorded by mechanical stenography
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

1 APPEARANCES:

2 For the Plaintiff: BENJAMIN E. FOX
3 KYLE MOONEY
4 Attorneys at Law

5 For the Defendants: MICHAEL A. CAPLAN
6 RYAN LANDES
7 JESSICA CALEB
8 JARRED KLOTFEIN
9 Attorneys at Law
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1 (Atlanta, Fulton County, Georgia, January 11, 2023, in
2 open court.)

3 - - -
4 P R O C E E D I N G S
5 - - -

6 THE COURT: All right. We are here in *RoadSync v.*
7 *Relay Payments.*

8 Can I get appearances starting with counsel for the
9 plaintiff?

10 MR. FOX: Yes, Your Honor.

11 Ben Fox from the law firm of Bondurant Mixson &
12 Elmore representing plaintiff, RoadSync.

13 Along with me is Kyle Mooney of the law firm Morrison
14 Foerster.

15 THE COURT: All right. And for the defendants?

16 MR. CAPLAN: Good morning, Your Honor.

17 Mike Caplan on behalf of the defendants, along with
18 Ryan Landes and Jessica Caleb and Jarred Klorfein.

19 THE COURT: Great. Mr. Caplan, somebody told me
20 today you have a place up in Lake Burton.

21 MR. CAPLAN: That is true.

22 THE COURT: Whereabouts?

23 MR. CAPLAN: Guilty, Your Honor. At least half of a
24 place. I split it with another family. But on the southwest
25 tip.

1 THE COURT: What road are you on?

2 MR. CAPLAN: We're on -- it's Wildflower Circle.

3 THE COURT: All right. I have a place just up Laurel
4 Lodge from there. Are you by the Belkins, by chance?

5 MR. CAPLAN: I don't know the Belkins, but we are
6 right off Laurel Lodge.

7 THE COURT: Yes. I know Wildflower. I've been going
8 up there since I was about four.

9 MR. CAPLAN: What a great place.

10 THE COURT: So my wife and I bought my folks' place
11 several years ago from them. And Judge Boulee told me today
12 that you have a place up there.

13 MR. CAPLAN: Oh, yeah.

14 THE COURT: It's a great place.

15 MR. CAPLAN: It's absolutely beautiful. And he's got
16 a neat place, too.

17 THE COURT: Yes. I've not been there. I've heard
18 about it. I've gone fishing in that area. But the place you
19 can fish in that area if you don't own land there is about
20 that big (indicating), or you can try to cast under the mark
21 of the potter.

22 MR. CAPLAN: You've got to make agreements with all
23 of your neighbors so you can go on their portion of the river.

24 THE COURT: Yes.

25 MR. CAPLAN: That's right.

1 THE COURT: Well, that's a great place. That's a
2 great place. Who do you own the place with?

3 MR. CAPLAN: They're longtime friends, a family that
4 lives in Athens.

5 THE COURT: Okay.

6 MR. CAPLAN: They're not lawyers, but one of my close
7 friends from college.

8 THE COURT: Yes. All right.

9 At any rate, we are here for this. I've got both of
10 your discovery disputes in front of me, and would like to
11 cover as much of it as I can today.

12 Is there an issue that you-all would like to address
13 first? Is there one that anybody thinks is the primary issue?

14 MR. FOX: Your Honor, I think the issue that has been
15 holding up discovery more than the other issue is the trade
16 secret identification issue.

17 But that being said, the laptop and hard drive
18 inspection is also very important to us.

19 THE COURT: Okay. Well, let's talk about the laptop.
20 I asked for the deposition of -- is it Droege? Is that how
21 you say the gentleman's name?

22 MR. CAPLAN: Ryan Droege.

23 THE COURT: Ryan Droege. I asked for his deposition
24 because I noted in your submission that the plaintiff says it
25 belongs to RoadSync and the defendants say it's a personal

1 computer. And I thought well, how can that be.

2 And it's more complicated than that. I understand
3 that he obtained it when he was thinking about whether to join
4 the company, when they were at a meeting at Georgia Tech, and
5 maybe it was bought by the former CEO with company money or
6 maybe it was bought by the former CEO with personal money.
7 And he thought maybe that it was in lieu of salary or that it
8 was given to him, and that really nobody went back on the
9 issue after that.

10 And so I just ask you-all as we move forward in this
11 case, don't act like things are clear when they're not. I
12 like details. And I don't like having to spend my time
13 ferreting out that what one person says is clearly this way is
14 clearly that way. It's more complicated. We can deal with
15 those complications. But we should just be clear that it's
16 messy sometimes rather than saying it's one way and saying
17 it's the other and then I'm like, well, wait a minute, these
18 both can't be true.

19 But it's not clear to me that this case presents a
20 situation in which a party can obtain direct access to
21 somebody's computer rather than simply making a discovery
22 request.

23 But I understand you-all have agreed to that process;
24 is that right?

25 And by the way, I would like this to be informal.

1 It's better if we have a conversation. So if you want to say
2 something, please feel free to say something rather than
3 waiting for the other side and back and forth.

4 MR. FOX: Your Honor, Kyle Mooney intends to speak to
5 the laptop and inspection protocol issues.

6 Would you like him to approach or do you just want a
7 colloquy?

8 THE COURT: He can stay right there.

9 MR. FOX: Okay.

10 THE COURT: He can stay right there. I'd like this
11 to be about as informal as it can be. I feel like that kind
12 of gets us to the best spot.

13 MR. FOX: Okay. Good.

14 MR. MOONEY: Well, your Honor, first, apologies for
15 the confusion regarding the laptop. It was clear from
16 RoadSync's perspective. We have the former CEO who submitted
17 a declaration that he purchased it and the computer is and
18 remains on our inventory internally, so we do believe that it
19 is our computer.

20 The parties are agreed, I believe, that a forensic
21 inspection should go forward. The dispute as Your Honor knows
22 is the appropriate protocol for that inspection of the laptop
23 and of the hard drive.

24 THE COURT: Do you-all agree with that?

25 MR. LANDES: Yeah. So I think, Your Honor,

1 Mr. Mooney is correct. We agree that forensic evidence will
2 be relevant here to show what happened with these devices,
3 when certain things might have been accessed, the extent to
4 which things might have been moved or sent around, so I think
5 forensic evidence will be relevant in this case.

6 But again, as Mr. Mooney said, I think the question
7 is what is the protocol and how much can be examined, right?

8 THE COURT: Okay. So well, you know, I started off
9 looking at both the *Ford* case, and I thought Judge May's case,
10 the *Noorani* case was also a very helpful case. But of course
11 those cases are which because of some misconduct by a party,
12 there is greater access provided to that item.

13 And that does not seem to be the case here. Whatever
14 happened with the laptop and whoever has it, it does not seem
15 to be the case that there was some level of malfeasance as was
16 suggested in some of these -- at least in the *Noorani* case.

17 But since you-all are doing this, you are still
18 taking this case out of the sort of standard situation, where
19 I guess the way it would be now, defendant has the laptop,
20 right?

21 MR. MOONEY: Right.

22 THE COURT: So plaintiff would just ask defendant and
23 defendant would provide whatever off, off of the laptop that
24 you want to do. You're not doing that.

25 It seems to me as though if there is a need for an

1 examination like this, we ought to make it as close to normal
2 as possible, right?

3 Because we don't have an egregious situation in which
4 one party gets to go have access to it because of malfeasance
5 by the first party, that we ought to treat this as normal as
6 possible in that regard.

7 And it seems to me as though the differences in the
8 protocol, I think, I think I agree with the defendants'
9 protocol, and we can talk about how we ought to adjust it. I
10 know I said I don't want to be micromanaging the adjustments,
11 but let's talk about those.

12 Who creates the image? The plaintiff says the
13 defendants' expert will do it, but the defendant says a
14 third-party neutral will do it.

15 Does that really matter to anybody?

16 MR. MOONEY: Your Honor, for plaintiffs, if I might,
17 we did cite the *Ameriwood* case. And I do believe that this is
18 not a case where discovery malfeasance has been proven. I
19 would agree with that.

20 But this is a case where the RoadSync computer, and
21 there's a dispute regarding who owns that, was used,
22 admittedly used to download email and the Google Drive and all
23 of the RoadSync information from the RoadSync system, so it is
24 alleged to be the instrument of misappropriation and the root
25 of it. And it has that very much in common with the *Ameriwood*

1 case, in which a forensic examination went forward.

2 As far as the image itself, what we had proposed, to
3 leave defendants in control of this to the extent possible,
4 would be that defendants' expert would take the image, our
5 expert could be there and watch. Defendants' expert would
6 provide a hash value, a unique value.

7 THE COURT: No. Let me just interrupt you, though.
8 I'm just thinking about who does it.

9 MR. MOONEY: So we believe that there is no need for
10 a neutral to do that.

11 THE COURT: Why don't you want to use your own
12 expert?

13 MR. LANDES: We don't have a problem using our own
14 expert. Saying that it would be a neutral instead of our
15 expert, we view that as a concession, right? So it sort of
16 takes out the possibility of an argument that it wasn't done
17 correctly.

18 But we want to set up a process that says here is how
19 the image is created, this is the official image that will be
20 the basis for the neutral exam, will be the source for the
21 forensic evidence that comes into the case.

22 THE COURT: Okay. So it seems to me as though y'all
23 can work it out. If a neutral is not necessary, I guess that
24 might save some expense. But it would seem to me as though
25 defendants' expert could do it just fine. I don't know

1 whether that would be a problem for him being your expert in
2 other things. It doesn't seem like it would. But that, to
3 me, seems to be something that really doesn't matter much.

4 So then let's talk about what happens to the images.
5 My understanding is that plaintiff, you say you get a list of
6 all the files and emails.

7 Defendant says that instead of just giving a list,
8 that your expert ought to run or the expert ought to run
9 agreed-upon search terms and provide defendant a copy of the
10 report.

11 The defendant then reviews the report for
12 responsiveness and privilege and then produces any items that
13 are responsive to the search that are not protected from
14 discovery and also provides a privilege log.

15 Is that where you-all have essentially your
16 disagreement with each other?

17 MR. MOONEY: The dispute does begin there,
18 Your Honor. If I may, we are fine with defendants' expert, as
19 we proposed doing the imaging. We would ask, though, that our
20 expert be permitted to be present and just be permitted a hash
21 value, that is a unique signature for the images, just to
22 maintain integrity. But we're otherwise fine with that
23 approach, as far as step one.

24 THE COURT: You can't quibble with giving them a hash
25 value.

1 MR. LANDES: Yeah. No problem with giving the hash
2 value. And if they want to, you know, fly their expert to
3 whatever city to sit there and watch us do the process, that's
4 fine.

5 THE COURT: Okay. So then the big issue, I think, is
6 whether or not plaintiff gets a list of all of the files and
7 all the emails. Isn't that really essentially the big
8 problem?

9 MR. MOONEY: Your Honor --

10 MR. LANDES: Sorry, go ahead.

11 MR. MOONEY: That's where the problem begins,
12 Your Honor, the difference between the protocols, yes.

13 And this is why a forensic examination is needed here
14 and why discovery can't just happen in the normal course. The
15 reasons for that are a few.

16 First of all, the laptop, by Mr. Droege's admission,
17 has been deleted.

18 THE COURT: Right.

19 MR. MOONEY: So we're not going to find, presumably,
20 any complete files or documents on the laptop.

21 Second, the hard drive, we don't know for sure
22 whether or not files had been deleted from that hard drive.
23 And so again, we may not find actual responsive full files on
24 the hard drive. That's the first issue that --

25 THE COURT: So why is that remedied by giving you a

1 list of everything?

2 MR. MOONEY: So the list of everything, the purpose
3 of the list of everything is to allow defendants an
4 opportunity to object to our forensic expert examining certain
5 files or disclosing the contents of certain files to counsel.

6 And so under our protocol, defendants' expert would
7 image the devices, sounds like we're agreed. Defendants'
8 expert would next create a list of all of the files and email
9 found on the devices, if any. I don't know the extent of the
10 full files or emails.

11 And then defendants, Mr. Droege, in particular, would
12 have a chance to object to the access of any of those files or
13 emails, based on privilege, based on work product or based on
14 any other personal medical, financial or family reason. That
15 list would then be provided to our forensic expert.

16 And the rule that our forensic expert would abide by
17 is that none of those files and emails will be touched in your
18 examination, none of the contents of those would be disclosed
19 to RoadSync counsel unless and until Your Honor ruled
20 otherwise in connection with an objection that we had about
21 something that had been raised.

22 So the file and email list was set up as a screen to
23 make sure that our --

24 THE COURT: I get that, but the issue is, though, it
25 gives you access to everything that exists. So you, for

1 example, get to see the fact of a communication.

2 You're right, there might be nothing on these, and
3 this is all then -- but we have to deal with the fact that
4 data will be found.

5 And if, for example, you get a list of all of the
6 emails that are on the computer or on the hard drive, that is
7 giving you information that you are not entitled to get just
8 by having somebody open up their file.

9 Even if you were not to get -- even if you didn't
10 have the content of those emails, you would then know this
11 person and that person spoke on this day and that would be
12 something you would be able to use to guide depositions, other
13 discovery, things of that nature. It seems to me as though
14 while that may be more efficient, that is not the way
15 discovery usually works. Usually, you have to go through a
16 process to get that information.

17 The second problem would be that essentially what
18 you're leading to is a part where you get -- where plaintiff
19 gets everything that is not otherwise protected from
20 discovery, either because it is attorney/client work product
21 or personal information, but that would be sort of without
22 regard to whether it is discoverable under Rule 26.

23 And I'm trying to, because we don't have a process
24 here where there seems to have been malfeasance, I'm trying to
25 keep this process as close to the standard discovery processes

1 that there is, which is you will have to ask for something and
2 then, if challenged, you have to explain why it's properly
3 discoverable, given the broad nature of discovery, but you
4 still have to prove it if it's challenged, and then they have
5 the opportunity to produce it.

6 So you only get to open the files that you, through
7 your hard work and labor, have identified rather than making
8 them give you a list of everything that exists and then you
9 now know what to ask for.

10 Do you see what I mean?

11 I mean, essentially what you're asking would be no
12 different than if you were to say to somebody in standard
13 litigation give me a list of all of the emails you sent during
14 the relevant time period. And then you could sit back and you
15 could say this one's date looks interesting, that one looks
16 interesting, the to and from is interesting to me. And then
17 you would use that to guide your subsequent discovery.

18 And I think that's one of the things y'all object to;
19 is that right?

20 MR. LANDES: Yes, Your Honor. And of course the lack
21 of a relevance or responsiveness.

22 THE COURT: Right.

23 MR. LANDES: Or discoverability screen to get the
24 substance.

25 THE COURT: Well, that's what I'm sort of saying.

1 I'm sort of saying they're getting one leg up just in the
2 identification of it, let alone if the only way in their
3 protocol that something's not produced is because it's
4 protected.

5 There are lots of things that are not produced that
6 are unprotected and still not produced, because they're not
7 responsive to a request that's asked, because somebody doesn't
8 think of it or because it's otherwise not relevant and
9 discoverable. I should say not likely to lead to the
10 discovery of admissible information. So I think in that
11 regard, you're sort of giving a list of everything moves too
12 far away from the norm given where we are.

13 MR. MOONEY: If I may, Your Honor.

14 THE COURT: Yes.

15 MR. MOONEY: I think that the request is firmly
16 within the bounds of discovery under federal rules. I think,
17 again, this is different -- I don't know that I'd say than the
18 normal course, but certainly different than many cases I
19 litigate and opposing counsel litigates and that are before
20 you. And the difference is that in this case, the computer
21 that we're talking about was the work computer of a defendant
22 who admitted that he downloaded all of these documents from
23 our systems and then took them with him. It is alleged to be
24 the instrumentality of the misappropriation.

25 THE COURT: And so you ought to be able to get all of

1 the discovery in the world to focus on that. That's what you
2 ought to get.

3 MR. MOONEY: We ought to be -- we absolutely ought to
4 be able to get the information that is on that computer that
5 is relevant to this case. And that is the protocol that we
6 have proposed.

7 And so when we get to this next step where we're
8 talking about us getting access to, you know, all of this
9 other information that might not be protected but might not be
10 responsive, I just want to be very clear as to what that is,
11 right?

12 We've already talked about the privileged documents.
13 Those would be logged, you know, in the normal -- in the
14 normal course and we'll get a log, and there will be no
15 additional information as to those documents.

16 The other personal documents, our proposal is that
17 our expert cannot look at those as part of the image, cannot
18 access them.

19 THE COURT: You mean things that have sort of
20 personal information?

21 MR. MOONEY: Right, correct.

22 THE COURT: Yes.

23 MR. MOONEY: We could be talking about a null set. I
24 don't have the information to determine that.

25 THE COURT: Right.

1 MR. MOONEY: But as to those documents, what we're
2 really talking about is so what information are we going to
3 get in a log as to that personal set of documents that maybe
4 is a null set, maybe is not, that is more than we would get in
5 the ordinary course and is that fair as part of the protocol
6 to get the discovery we need here.

7 And we can talk about whether there are ways to log
8 or identify those documents that give us, you know, very
9 little information. We don't want -- we don't care about
10 those documents. We need enough, right, to be able to
11 determine whether, in fact, these, you know, really seem to be
12 personal documents, and so there needs to be some indication
13 as to why they've been withheld, but we don't need the
14 description of the content of all of those documents. We
15 don't want it. It's not relevant. But we do think this is
16 required as a screen, right, this is -- so that our expert
17 does not look at these documents in conducting his forensic
18 examination.

19 THE COURT: But I think there's a subcategory.
20 There's another category. And that would be not your client's
21 information that was downloaded.

22 MR. MOONEY: Um-hmm.

23 THE COURT: But also not personal information, just
24 other stuff on the computer that might be emails that he was
25 sending at the time, that's the obvious one to think about.

1 Emails that he was sending. Let's say that he was sending
2 emails about his decision to compete or whatever it was he was
3 going to do when he left the company.

4 As long as they don't include your protected
5 information, you ought to have to go find those through the
6 normal course of discovery rather than getting a list of them
7 now. I think that's really the line I'm trying to draw is
8 just that you should have to go back and say we want all of
9 the communications between A and B that dealt with this. And
10 you should have to go ask for that. And then they should have
11 to give them to you or not give them to you and fight about
12 it.

13 But not give you a list so that you know at least,
14 for example, dates of communications. Right?

15 Or what if he downloaded -- what if he was looking at
16 other industry data and those files are, say, they're not your
17 stuff but other industry data that might be something one
18 would look at while looking at your client's information. You
19 shouldn't be entitled to know that he has that until you go
20 ask for it.

21 MR. MOONEY: Two points, Your Honor.

22 One, the extent that there are any complete files or
23 emails on that hard drive and on that laptop, agreed, that's
24 absolutely discoverable in the normal course and those
25 documents would have to be produced in response to our regular

1 request for production.

2 THE COURT: If you made it, if you made it, if you
3 successfully got around any obligation or challenge they made,
4 but shouldn't you have to go through that process?

5 MR. MOONEY: We should get a forensic examination,
6 but as to that process, those documents would be produced in
7 the normal course. We have served several requests for
8 production. We don't have any documents yet. But we've
9 served several requests for production. And I don't believe
10 that there would be any emails or files on those devices that
11 are -- that would fall outside the scope of what we have asked
12 for and that is relevant to the case that we would, you know,
13 be tipped off about in this kind of a protocol.

14 THE COURT: But you admit that if you were, you
15 shouldn't get the tipoff.

16 MR. MOONEY: I don't want the tipoff, Your Honor. I
17 want as little information in that log as possible. The full
18 purpose of that log is to screen documents for them. And so
19 if there are categories that aren't personal, financial,
20 family, medical that they think are on that computer, there's
21 another company that Mr. Droege is running, I don't know, then
22 we're happy to talk about carving those out and having the
23 absolute minimum information provided in the log.

24 We just need the log as a screen so that our expert
25 can perform the forensic examination. And we'll get to that

1 and why that's needed. I'm happy to talk about that. But the
2 purpose of that is, as I've said, a screen for defendants.
3 And if there's an additional category to add or we can agree
4 on the amount of detail in a log, happy to, because we don't
5 care about those documents that aren't relevant to the case.

6 THE COURT: So it seems like you agree with me
7 that -- I think you and I might just disagree in the
8 likelihood that that will happen. I think I see it as more
9 likely that there is going to be some things that are maybe
10 relevant but not your client's stuff, and that maybe you
11 haven't asked for that stuff yet, and you ought to have to do
12 that.

13 But maybe that's where the search that they want to
14 do comes in, maybe it gives you a chance of grabbing all of
15 those items. Right?

16 Because what they want is after the forensic image is
17 made that you-all negotiate search terms or parameters of a
18 search to be run across it.

19 Is that right? Is what y'all are asking for?

20 MR. LANDES: That's right, Your Honor. I mean, it
21 could be done now, it could have been done three months ago.

22 THE COURT: So why doesn't that give you --
23 essentially when you get the output, why doesn't that give you
24 what you want? Because you don't know what's not hit? You
25 don't know what's not caught in the search?

1 MR. MOONEY: Your Honor, a few problems. I mean, it
2 sounds like we're getting into it, and so let me begin.

3 The first problem that we have with defendants'
4 protocol is timing.

5 THE COURT: Yes, I agree with you.

6 MR. MOONEY: The protocol, I read that protocol and
7 we had understood, Your Honor, that you wanted a protocol for
8 a forensic inspection of the computer. We tried to do that.
9 My interpretation of defendants' protocol is that it is
10 effectively a protocol setting out a series of meet and
11 confers to try to agree on a protocol for an inspection.

12 And there is zero chance under that protocol that we
13 are going to be inspecting a computer in the next two or three
14 months and meeting the discovery deadlines in this case.

15 Two, as far as the substance of it, the reason that
16 agreeing on file types as part of that first meet and confer
17 doesn't work is we don't necessarily know all of the file
18 types that might be at issue. Because, for example,
19 extensions on a file could have been changed, it would not be
20 picked up. A file could have been saved into a different file
21 type, it wouldn't be picked up. And so limiting it by file
22 type is troublesome.

23 Search terms, same thing, the list of search terms
24 here that we would have to propose in order to try to capture
25 any of the documents that we have identified or any cut and

1 paste, dupes or versions of some of those documents would be
2 enormous. And the likelihood that these two parties are going
3 to agree on search terms, I think close to zero, and would
4 have us before Your Honor.

5 THE COURT: Yes, but why couldn't we just agree that
6 you get to decide the search terms?

7 MR. MOONEY: Well, I think that it would be a long
8 list that would include almost all of the words, frankly, on
9 those -- on the trade secret identified documents. It would
10 be a very long list. But I think the biggest problem with
11 this is that at the end of the day, it's not just the
12 documents we need, right? And this is what's -- what's
13 critical.

14 There are going to be three things on the laptop and
15 the hard drive, three buckets, if you will. The first bucket
16 are files that still exist saved in the so-called allocated, I
17 guess for lack of a better word, space of the computer,
18 existing files. And I don't know how many of those there will
19 be. It sounds as though on the laptop, they have been
20 deleted. On the hard drive, I don't know.

21 That's all really that that search term protocol is
22 going to get to, but these are the other two buckets that are
23 critical to us.

24 Bucket two is the unallocated space of the computer,
25 right? That's where our expert can look. That's the scraps,

1 so to speak. Your Honor is familiar with this, right?

2 THE COURT: Yes.

3 MR. MOONEY: Where we can find, okay, this isn't a
4 document extension here, this isn't a search term word, but I
5 can tell based on my professional training that this is a
6 trace of X document, Y document and it goes back here. The
7 unallocated space will show us what has been, for example,
8 deleted that used to be on that computer and potentially when.

9 The third bucket that doesn't get picked up that's
10 absolutely critical in this case is the artifact bucket,
11 right?

12 And the artifacts are -- they're not files, they're
13 not unallocated space, it's a separate bucket, log files,
14 other information, if you will. So why is that important?
15 Well, the artifacts are going to tell us things like when was
16 that computer turned on and off. When were documents
17 accessed, right?

18 Even if they weren't changed, when they were accessed
19 and looked at. When were files moved from that computer.
20 When were hard drives hooked up to the computer. When were
21 FTP, like electronic transfer programs and protocols used on
22 that computer. And that other sort of information.

23 And so those last two buckets of the unallocated
24 space and the artifacts, that's what's critical here for us to
25 know exactly what and when there was a download, what and

1 when, you know, documents were accessed and where they were
2 moved.

3 And so what we've tried to do is propose a very
4 efficient streamlined protocol that allows our expert to do
5 that, that hard work, but has this first screen to get rid of,
6 you know, all of this stuff that, again, frankly he is not
7 going to care about and neither are we.

8 THE COURT: And you don't think you would get bucket
9 two or three through their protocol?

10 MR. MOONEY: We would not.

11 THE COURT: Because they're not searchable in
12 unallocated --

13 MR. MOONEY: The search term/file type portion,
14 that's the first meet and confer step, that would not give us
15 any of that information.

16 THE COURT: Why is that?

17 MR. MOONEY: Because search terms and file types
18 aren't going to pick up the artifacts or the unallocated.

19 THE COURT: You can't search across unallocated
20 space?

21 MR. MOONEY: Not in that way.

22 THE COURT: No, because first you have to do
23 something.

24 MR. MOONEY: That's my understanding, Your Honor,
25 yes.

1 There is a second -- this is at the second meet and
2 confer -- I'm sorry, the third meet and confer in their
3 protocol, which allows for an opportunity for the parties to
4 discuss whether we could look for the use of any mass deletion
5 programs or certain other software on the computer.

6 And so that's sort of a nod, if you will, to the fact
7 that there are other things on there, but it falls woefully
8 short of providing access to the artifacts and the unallocated
9 space.

10 THE COURT: Okay. Here's what I think. As I've said
11 before, I want to keep as close to the norm as we can. And I
12 want to make sure that the plaintiff has to do the discovery
13 process of asking for the things that they're entitled to get,
14 and not just opening the drawer of something of the
15 defendants.

16 But it's hard to say what's going to be there right
17 now, because a lot might have been deleted off of there. And
18 the concern I have with the plaintiff's protocol is the
19 assumption that it would provide access to things to which
20 they're not entitled.

21 So I would like to do the first two steps first and
22 see what we're dealing with. The first step would be the
23 defendants' expert creates an image, right? And from that
24 image, then provides -- the first step of the plaintiff's
25 process is that a list of all files is then created, right, of

1 all items on it is created; is that right?

2 MR. MOONEY: We had proposed a list of the files and
3 emails would be created so that they can provide objections,
4 yes, or with instruction not to access, yes.

5 Your Honor, if I may, I mean, it strikes me again
6 that when we're talking about plaintiff's --

7 THE COURT: Let me just interrupt you for one second.
8 Marshal, do you need me for something?

9 MARSHAL: No, sir. No, sir.

10 THE COURT: Okay. All right. If you did, I didn't
11 want you to have to sit back there and wait.

12 All right. Sorry. Go ahead.

13 MR. MOONEY: It strikes me again that all we're
14 talking about here, right, is personal, medical, financial,
15 family or other completely unrelated information.

16 THE COURT: No. No. See, you keep ignoring the
17 thing I'm concerned about, which is totally relevant discovery
18 that you have to go find and fight for, that you don't get
19 handed to you on a silver platter, because this is not a case
20 where now you've proven any malfeasance.

21 So you keep ignoring the thing that I'm mostly
22 concerned about, which is totally relevant discovery that is
23 not your client's stuff that you have to find a path to get
24 it.

25 Do you see what I mean?

1 MR. LANDES: And, Your Honor, if I could add briefly.
2 That's a primary concern, that might be 1A.

3 But 1B is the material that wouldn't be discoverable
4 in the first instance, that they wouldn't even ask for, right,
5 so that is not relevant.

6 THE COURT: Like what?

7 MR. LANDES: So, I mean, Your Honor, gave the example
8 of, you know, maybe what Mr. Droege is doing in his free time,
9 communications he's having with friends about new business
10 ideas.

11 THE COURT: Well, see, he's putting that under purely
12 personal and totally irrelevant, right?

13 MR. MOONEY: Yes.

14 THE COURT: He's putting that in sort of the purely
15 personal, it's about family stuff or other stuff. He's
16 putting that in the purely personal. You would never want it.
17 They would never want it. It would have nothing to do with
18 this case.

19 MR. LANDES: All right. Then fine. How about
20 material that Mr. Droege -- just his day-to-day work at Relay
21 that has nothing to do with their stuff, nothing to do with
22 the products at issue, but his day-to-day work in that
23 company. His emails, his day-to-day work in that, his
24 planning for that, for material three, four years removed from
25 when he left RoadSync.

1 THE COURT: That's the type of stuff I'm worried
2 about. Or the stuff that's like, you know, he hears about the
3 lawsuit and what does he say to somebody. I don't know. I
4 don't know what else he would do.

5 What are the other documents if on the day that he
6 downloaded files, what are the other documents that he looked
7 at on the Internet or saved himself or wrote or created? You
8 should have to go find those. You should not be given a
9 roadmap to them right off the bat. You have to go find those.
10 Because you keep ignoring that sort of subset.

11 Do you understand now?

12 MR. MOONEY: I understand, Your Honor.

13 THE COURT: But you don't agree with me?

14 MR. MOONEY: I would find it hard to believe that
15 there is information that was relevant to this case that
16 didn't fall within the scope of our outstanding RFP, so I do
17 believe --

18 THE COURT: Sure.

19 MR. MOONEY: -- I'm in agreement with opposing
20 counsel that the category is more in the metes and bounds of
21 the personal or irrelevant information.

22 THE COURT: So I don't know the full extent of your
23 other discovery responses, but they ought to get a chance to
24 argue against them when they see something.

25 MR. MOONEY: What I was wondering, Your Honor, was

1 whether there was -- and I'm thinking out loud here -- always
2 dangerous -- a path forward that would provide satisfactory
3 protection but get this moving along.

4 And that would be if there was some way that the list
5 and the objections could be presented to our expert and
6 outside counsel in a way that would not reveal unnecessarily
7 the substance of these documents that Your Honor is most
8 concerned about and that counsel and I, I think, believe to be
9 the irrelevant personal information or certainly information
10 about other companies or products that are completely
11 irrelevant to the case.

12 There may be a way for us to continue to meet and
13 confer as to how we resolve that issue, but yet move forward
14 under our protocol in a way that doesn't give us the
15 informational advantage that Your Honor is concerned about.

16 THE COURT: So yes. I'm trying to think of that,
17 too. So tell me, what is the output that the forensic expert
18 makes of the laptop and the hard drive? I think you say in
19 yours in Step 14 is that defendant will serve on the plaintiff
20 objection to the production of any files.

21 What is it that they would look at, that you would
22 look at, or that you would have them look at?

23 MR. MOONEY: Under our protocol?

24 THE COURT: Yes.

25 MR. MOONEY: So under our protocol, a list of

1 objections would be provided by defendants to our expert. Our
2 expert has agreed, he could agree in writing, he certainly's
3 subscribed in the PO, but he could agree in writing as well
4 not to access or look at any documents where there is an
5 objection unless and until Your Honor were to overrule that.

6 THE COURT: Well, do you see Part 4 or Step 4?

7 MR. MOONEY: I do.

8 THE COURT: So you say: Plaintiff's forensic expert
9 will retain a copy of the forensic images and provide a copy
10 to the defendant but shall not disclose the forensic images to
11 plaintiff's counsel or any other person.

12 So what they're giving is a forensic image, right,
13 and that's what you would then have the defendant review and
14 object to.

15 MR. MOONEY: Correct. The forensic image would be
16 provided to defendants. The objected to information would be
17 identified.

18 THE COURT: Okay. Now, does that forensic image,
19 when that's created, will that let us know what we're dealing
20 with? I mean, I'm just wondering whether at that point we can
21 address the issue of whether or not production or giving --
22 putting the burden on the defendant to object would be too
23 onerous. Maybe I'm not saying that clearly.

24 MR. MOONEY: I think I understand, Your Honor.

25 THE COURT: Does it allow us to --

1 MR. MOONEY: The volume of data, for example.

2 THE COURT: Yes. Because it may be that there is
3 nothing. It may be that what we find out is that everything's
4 unallocated and in your third bucket and therefore is not
5 searchable. And then we know we can't follow the defendants'
6 protocol, because we can't search across it.

7 MR. LANDES: So, Your Honor, I just want to note that
8 I vehemently disagree with the representation that you can't
9 search artifacts and that you can't search unallocated space.
10 When experts do this work, they don't sit there and open up
11 unallocated space and read it character by character, they
12 search it for materials.

13 THE COURT: Well, I know. Yes. But sometimes in the
14 unallocated space, you just have a fragment, and I don't know
15 if that makes a difference or not, I don't know.

16 MR. LANDES: But the fragment would still have
17 something that's searchable.

18 THE COURT: Yes.

19 MR. LANDES: Their expert is not going to sit there
20 and read character by character. He conducts searches.
21 That's the way that the process works. There are searches
22 that are run.

23 Now, can he search for a hash value for an entire
24 file? Is he searching for search terms? Is he searching for
25 file names? All of those things can be searched for, but an

1 expert -- the notion that you can't search this material, that
2 experts in these cases read line by line gigabytes and
3 millions of pages looking for something that they can infer is
4 a copy, that's not how it happens. These are searches that
5 are run. And that -- that's a process that's embodied in Step
6 2 of our protocol.

7 And Mr. Mooney cited the *Ameriwood* case.

8 THE COURT: Right.

9 MR. LANDES: Well, you can see our Step 2, to the
10 extent there is any vagary or imprecision in it, it's because
11 we took a block quote from the process in *Ameriwood*.

12 THE COURT: I know.

13 MR. LANDES: And put that in our protocol. And so if
14 Mr. Mooney says, well, there has to be a step where this
15 search is run on the artifacts, that's fine, we have no
16 objection to that.

17 MR. MOONEY: Your Honor, a couple of points. One, on
18 *Ameriwood*, a different case, and the parties agreed in that
19 case, that's the second of the *Ameriwood* decisions, that was a
20 proposal that the parties agreed to and put before the Court,
21 so presumably both sides agreed that that would be an
22 effective mechanism in that case.

23 Two, as far as the searching, this is a point that
24 probably should be emphasized, as counsel was, I absolutely
25 agree that forensic examiners with years of training in this

1 area have the wherewithal to effectively look through
2 unallocated space and look through artifacts.

3 The question for is us here, right, is whether that
4 is more efficiently done by those experts or whether it is
5 efficient for outside counsel to try to come to an agreement
6 as to each and everything that a forensic examiner would do,
7 you know, as part of this iterative process, in performing
8 that search.

9 And I fear that we would be frequently before
10 your Honor. But I do think that again, as Your Honor had
11 mentioned earlier, there could be a way to have the image
12 taken, to get that going, and the hash value, we're agreed, to
13 then have defendants provide a list of objections in some way
14 that doesn't reveal anything about the documents they're
15 objecting to, other than enough for our expert to not look at
16 them. I mean, a date, for example, we could -- we could
17 figure it out.

18 That way, our expert could, you know -- and their
19 expert could move forward with the examination. None of those
20 documents or files would be touched. And we, in parallel,
21 without holding up discovery could try to work together to
22 figure out, number one, is there a problem, because again, we
23 don't know whether there is, and, two, how big is it and what
24 is the solution. But those paths could move together.

25 MR. LANDES: One thing I want to note, Your Honor,

1 just briefly. I mean, you know Your Honor has spoken about
2 trying to make this process look as much like normal discovery
3 as we can. And what's not normal in discovery, what's not
4 part of the normal process of discovery is for the plaintiff
5 to say give us everything, and then it's the defendants'
6 obligation --

7 THE COURT: I agree.

8 MR. LANDES: -- to go through document by document
9 one by one, artifact by artifact, and assert a specific
10 objection to each one as being personal and then group those
11 and categorize them for the plaintiff. That's not normal
12 discovery.

13 THE COURT: I completely agree with you. And that's
14 what I want to avoid.

15 What I don't know is whether that really is going to
16 happen. One of the reasons I say that is because -- I mean,
17 you-all know a lot more about this and what might be on it and
18 all of those things. But I'm trying to --

19 Mr. Mooney does not seem to believe that that is
20 going to be an issue, because of the breadth of discovery
21 that's been requested or for what he believes might be on it,
22 I don't know.

23 But I think what we ought to do is I think we ought
24 to do Steps 1, 2 and 3 of the plaintiff's updated protocol,
25 except that it ought to only go to defendants' counsel. And

1 at that point, defendants' counsel can look at that list and
2 can let me know whether that list creates exactly the problem
3 that you-all are afraid of, that the defendant is afraid of.

4 Okay?

5 I think, I think that if it is, then the process then
6 ought to be some type of search across it. I think that is
7 more the appropriate path than requiring the defendant to
8 defend each and every item on a list, but we might not be
9 talking about much. I guess it depends on how good he was at
10 wiping the computer, I don't know.

11 MR. LANDES: Well, and so, Your Honor, I just want
12 to -- just a slight point of clarification, because I know you
13 said Your Honor appreciates details, and I believe this is in
14 the deposition transcript. What he did is called a factory
15 reset.

16 THE COURT: Yes.

17 MR. LANDES: And so that's not a process -- it's not
18 evidence destruction software where items are deleted. It's a
19 setting in every computer that says essentially turn this back
20 to the way that it came from the factory.

21 THE COURT: Right. But it depends -- I mean, I guess
22 how much he put back on it after that would control how much
23 of the space has been written over, right?

24 MR. LANDES: That's -- that's right, Your Honor. I'm
25 not as familiar with the intricacies of factory reset and

1 unallocated space, so I can't speak to that entirely, but,
2 yes, it would depend on things like future usage of the
3 computer and what might be there or preserved somewhere.

4 THE COURT: All right.

5 MR. LANDES: But it's not an empty laptop, but
6 it's --

7 THE COURT: Yes.

8 MR. LANDES: As far as we can -- as far as we know,
9 based on the testimony, devoid of whatever he downloaded from
10 RoadSync.

11 THE COURT: All right. So let's do the plaintiff's
12 updated proposed examination Step 1, 2 and 3, with the caveat
13 that in 3, the defendant gets the list and gets to look at it
14 and then you can let me know whether it creates that issue.

15 Okay?

16 MR. LANDES: Understood.

17 THE COURT: And the way we'd be able to do it would
18 be to tell me that there are X number of files on here and
19 we've concluded that they include things that are not
20 personal, that we think are not relevant to this, and that we
21 shouldn't have to disclose for whatever reason.

22 And if you want to do something like that, I don't
23 know, I could -- talk to them first, but I can look at that
24 in-camera, if need be, to see whether or not I think that
25 they're getting more than they ought to get.

1 Okay?

2 MR. LANDES: Understood, Your Honor.

3 THE COURT: But I want to try to do this efficiently.
4 Because what I don't like is what the plaintiff identified,
5 which is the long, drawn-out process that is part of the
6 protocol afterwards of all the search terms and then you run
7 it and that does look like it would take quite a long time.

8 Okay?

9 MR. LANDES: Understood, Your Honor.

10 THE COURT: So I'd like to try to see if we can
11 figure out a way of speeding that up if we get there.

12 Okay? All right? Does that make sense?

13 I know it's just taking it one more step, but they
14 say that's how you eat an elephant. And so that's kind of the
15 way I am.

16 Okay?

17 MR. MOONEY: I'm not sure about the elephant,
18 Your Honor, but it does make sense.

19 THE COURT: You don't know that's how you eat an
20 elephant, one bite at a time?

21 MR. MOONEY: I have heard. I have heard. I've not
22 witnessed it. But I think that the information that we get
23 from that, I mean --

24 THE COURT: Right.

25 MR. MOONEY: We may not agree on everything and we

1 may be back before you, but I'm sure that we will be able to
2 resolve perhaps some of it based on that information.

3 THE COURT: I actually don't think you-all disagree
4 on what's right.

5 MR. MOONEY: Right.

6 THE COURT: I think you-all just disagree on what's
7 going to be there and whether all of those other parameters
8 matter, and so let's figure whether they matter or not.

9 Okay?

10 MR. MOONEY: Yes, sir.

11 THE COURT: All right. Now, let's talk about the
12 other issue, which is the trade secret issue.

13 I have looked at the customer list and data
14 compilations and perspective customer lists and the source
15 code.

16 I'm not clear what else y'all want, what else the
17 defendant wants. I understand that you're frustrated at them
18 for updating it and changing it. I don't think I can prevent
19 them from doing that. I think they have a right, if they were
20 to go through discovery and find something else that was
21 allegedly stolen, to assert that as a trade secret.

22 So maybe I'm not exactly sure what the problem is. I
23 think that they've given you a fairly good list. I looked at
24 some and I see that there's some financial information that
25 might not be protected, but I also saw some things, one was I

1 saw data for Coyote Logistics.

2 If I was going out in the business, I think that's
3 who I'd target, because I think some of the information I saw
4 showed me that Coyote Logistics had a lot of money they were
5 spending for a period of time. Maybe that's not protected or
6 maybe it is, but I do think there was some information in
7 there that looked like it could be protected information, so
8 what more do you want?

9 MR. LANDES: Yeah. So there's a couple of points
10 there, Your Honor. The first one has to do with the adequacy
11 of the identification itself.

12 And the second one has to do with the right to amend.

13 So I want to take those actually in reverse order and
14 I'll start with the right to amend. And apologies if our
15 papers were unclear on this. We're working with limited
16 space.

17 We're not asking for an outright prohibition on them
18 ever amending their trade secret identification. If they find
19 something new in discovery that they couldn't have known about
20 before, right, we're asking for a good cause requirement,
21 which is consistent with the authority that we've cited, if
22 they want to amend it.

23 So if, for instance, they're going through discovery
24 and they say, oh, my gosh, in addition to the 12 files we
25 identified, there's these two other files that we had no idea

1 you took, they could come back and say, well, we learned in
2 discovery you took those other files, right? That's something
3 that's new information, they wouldn't be able to tell that
4 before discovery.

5 What we're trying to avoid is a situation where we
6 get a dump of documents, right, 800 pages, where you flip
7 through and you say, well, maybe that's a trade secret, maybe
8 it isn't. And then three months from now after discovery,
9 when we prove the fact that Coyote Logistics is one of the
10 largest players in the market, you can find that with a
11 ten-second Google search.

12 THE COURT: I know you can.

13 MR. LANDES: Right.

14 THE COURT: But the data was more than that.

15 MR. LANDES: I understand that, Your Honor, right.

16 But once we've proven that that material is public,
17 right, or that it wasn't misappropriated, it never came over
18 to Relay, we get something new that says, oh, you know what,
19 you were looking at the wrong part of the spreadsheet. It's
20 actually this other part over here.

21 Or actually, you know what it is, it's this
22 combination of these three disparate pieces from these three
23 separate spreadsheets, that's what the trade secret is.

24 Now, they would be -- they should be able to tell the
25 time of that now. What is -- what's in and what's out. And I

1 think a pointed example, Your Honor, I'm going to refer you to
2 Appendix D, which relates to the source code.

3 THE COURT: So give me a second.

4 MR. LANDES: Yeah, so it's -- and Mr. Mooney and I
5 conferred ahead of time on the sealing motion, and he can
6 correct me if I'm wrong, we've agreed that Exhibit B to the
7 trade secret ID joint statement --

8 THE COURT: Okay.

9 MR. LANDES: -- which is Appendices A through D.

10 THE COURT: It's the customer information and the
11 compilation of data, but not the code?

12 MR. LANDES: Well, not quite, Your Honor. So it's
13 essentially the list of file names.

14 THE COURT: Okay.

15 MR. MOONEY: Just before you do -- we had agreed,
16 Your Honor, that that Exhibit B, Appendices A through D, could
17 be unsealed. The request to seal would be withdrawn, provided
18 that defendants withdrew their opposition to sealing Exhibit
19 C. That's the 800-page trade secret identification.

20 MR. LANDES: This (indicating). The printout of the
21 customer lists.

22 MR. MOONEY: The trade secret. Correct. The
23 information that is alleged to be trade secret, that was the
24 agreement that we reached.

25 THE COURT: So Appendix A will be unsealed, Appendix

1 B and C will be unsealed and D, but Exhibit C -- in front of
2 me I've got your provisional under seal filing.

3 MR. LANDES: Yes. So we have Exhibit -- Exhibit A,
4 if we just march through it, Exhibit A is the written
5 interrogatory responses.

6 THE COURT: Yes, okay.

7 MR. LANDES: Those are already -- those are not --
8 those weren't asked to be sealed.

9 Exhibit B is about five pages, maybe, and it's a
10 series of tables labeled Appendix A, Appendix B, Appendix C
11 and Appendix D. The parties have agreed that that will be
12 unsealed.

13 Appendix C is 821 pages, it's a printout of the -- to
14 use a shorthand term, the customer list --

15 THE COURT: Yes.

16 MR. LANDES: -- data. We've agreed that Appendix C
17 will remain sealed. Obviously with defendants' reservation of
18 rights that we don't think this material is confidential or a
19 trade secret or anything like that.

20 THE COURT: Okay. Mr. Barton, they're doing to me
21 now what they did to me in their writing documents.

22 I don't think we're using the same terminology, and I
23 know you-all know this a lot better than I do.

24 I'm looking at the provisionally sealed record or
25 document at 70-2. Do you-all have that?

1 MR. LANDES: I don't know that I have that specific
2 docket entry.

3 THE COURT: I think what you're referring to there,
4 that has Exhibit B to the joint statement. It includes
5 Appendix A, which is 10 or 12 file names.

6 MR. LANDES: Right.

7 THE COURT: Exhibit B, which is just over a page of
8 file names.

9 MR. LANDES: Appendix B.

10 THE COURT: I'm sorry, Appendix B. And Appendix C,
11 which is one page of file names. And Appendix D, which is two
12 pages of file names. All of those may be unsealed.

13 MR. LANDES: Correct.

14 THE COURT: It also has Exhibit C, which starts with
15 an index of exhibits and then goes into what I think you care
16 about, which is the spreadsheets.

17 MR. LANDES: Right. So, you know, obviously we would
18 reserve the right to challenge Exhibit C, but for purposes of
19 today, we've agreed, while reserving rights, that Exhibit C
20 can remain sealed.

21 THE COURT: Okay. All right. That's what we will do
22 then. All right.

23 MR. LANDES: Okay. So getting back on to the main
24 road then, if you're looking, Your Honor, at Exhibit B,
25 Appendix D.

1 THE COURT: Okay. I'm with you.

2 MR. LANDES: Okay. And if you look at the -- it's
3 the first entry on the top page, which is RoadSync web. And
4 it says: All front-end code for RoadSync's checkout to allow
5 users --

6 THE COURT: No, that's not what I have.

7 MR. LANDES: Oh.

8 THE COURT: That's not what I have. I have that as
9 the second page.

10 MR. LANDES: Right. I meant to say I'm looking at
11 the first entry on the second page.

12 THE COURT: Okay. All right.

13 MR. LANDES: RoadSync web. Are you with me?

14 THE COURT: I am. All front-end code for RoadSync's
15 checkout.

16 MR. LANDES: Correct. To allow users to access the
17 functionalities of the software as implemented in the APIs in
18 a way that is user friendly and industry appropriate.

19 I would say, Your Honor, that description is devoid
20 of substance. When our expert reviews the source code, he has
21 no idea what he is supposed to be looking for.

22 To understand what does it mean to have code that is
23 user friendly and industry appropriate. That describes every
24 piece of software that has ever been written or ever will be
25 written.

1 And so when he looks through these files, what is he
2 looking for? Now, if we're looking for these specific source
3 code files on the Relay system, that's an easy process. We
4 can just show those files aren't there. If we show that Relay
5 source code was written from scratch, right, we can easily
6 show that as well.

7 But then how do we understand the -- literally the
8 infinite set of possibilities of what they might come back and
9 say somewhere within the dozens and dozens of files is trade
10 secret in there. What are we supposed to be looking for?
11 What are we supposed to be comparing? What are we supposed to
12 be analyzing? What am I -- what are we supposed to ask their
13 witnesses about in discovery? Right?

14 I mean, we can't sit there with literally thousands
15 of files of source code and go through line by line and say is
16 it this? Is it this? What is it that we're supposed to be
17 evaluating? And that's the issue we're concerned about.
18 We're concerned about a situation where we go down these blind
19 alleys in discovery to try to understand what it is within
20 these files that's actually claimed to be trade secret.

21 And then all of a sudden at summary judgment, we
22 don't even know what we were aiming at. Right? And,
23 Your Honor doesn't know what he has to resolve, because it
24 could be anything. Right?

25 And so it's a similar function. You know, if you

1 look, for instance, check printer, right? Source code to
2 print checks. I don't know what we're supposed to be looking
3 for in there.

4 Is it the notion that you can print a check?

5 Is it how you communicate with a printer, which every
6 computer does?

7 I don't know. Right?

8 I don't know what we're looking for. And it's
9 similar in the customer lists, right, so when we --

10 THE COURT: Hold on. Let's take this again a bite at
11 a time.

12 What do you say about these examples?

13 MR. FOX: With respect to the source code, we have
14 fully described and produced all the source code. The cases
15 say if you produce all the source code, which you are claiming
16 is a trade secret, not in its entirety, we break it down by
17 functions, we identify the four key functions, we even
18 identify the folders and repositories in which the code
19 files -- that correspond to each of those functions. That
20 satisfies this initial threshold of reasonable particularity,
21 Your Honor.

22 What I'm hearing amounts to a merits defense that
23 might be appropriate down the road after discovery in a motion
24 for summary judgment, in a motion for directed verdict after
25 the close of plaintiff's case, or to a jury after they've been

1 instructed on all of the potential defenses and requirements
2 of a trade secret under federal or state law.

3 Under the case law with respect to what we're doing
4 today, which is getting past this threshold identification,
5 we've done that.

6 He seems to be taking issue with some of our sort of
7 English language descriptions of this functionality, but we go
8 far beyond that. We're not just at a high level describing
9 it.

10 THE COURT: Where do you go beyond that?

11 MR. FOX: By producing the code. We've produced the
12 entire code set to their expert.

13 THE COURT: So what do they do? What do they do with
14 their expert?

15 MR. FOX: I don't know what they're trying to do with
16 their expert. But we've made it available. All we have to do
17 now is identify the trade secrets. And we've done that by
18 producing the entire code in each of the key functions that
19 comprise the program, the checkout program, and shown all of
20 the code that comprises each of those functions and where it
21 is kept within the code set.

22 THE COURT: So when do you give them more
23 information?

24 MR. FOX: We've given them the entire code set.

25 THE COURT: No. But when do you give them -- explain

1 to them in not this written description here but why you can
2 consider it a trade secret?

3 MR. FOX: Well, as -- as the case is litigated,
4 they're going to have their defense as to why it's not a trade
5 secret, the information in there, and we're going to be
6 presenting our case as to why it is a trade secret, if
7 they're --

8 THE COURT: How are you going to do that?

9 MR. FOX: How do we intend to do that?

10 THE COURT: Yes.

11 MR. FOX: Well, we're -- we had asked for access to
12 their code set and we're going to see what in each code set
13 matches up.

14 THE COURT: Because you want to see if their code set
15 mirrors your code set?

16 MR. FOX: That is correct, Your Honor.

17 THE COURT: Why isn't that an avenue for doing that?

18 MR. LANDES: Yeah, so, Your Honor, I think that's a
19 helpful distinction, right?

20 So if the issue was do these files appear in your
21 code set? It's an easy process. Right?

22 We can look, these files will not be there. I can
23 assure you of that.

24 But what we will come back and see is, well, when we
25 hear what's actually litigated is it will be reverse

1 engineered to match whatever they find in our code set. So
2 they'll say, well, yeah, the files aren't there. Well, yeah,
3 you didn't actually copy any of this code. But what our trade
4 secret is, is putting these three steps together from these
5 separate files, having that there, that's what the trade
6 secret is. And oh, lo and behold, you also used those three
7 open source libraries. Right?

8 THE COURT: So you're talking about they're going to
9 say that you've got three different codes put together to do
10 this?

11 MR. LANDES: Yeah, right.

12 THE COURT: You've linked this part of the process
13 with that part of the process and this part of the process?

14 MR. LANDES: Potentially. It could be anything. Or
15 it might be there's a random parameter here and that parameter
16 could be anything from one to ten and, lo and behold, the
17 parameter four that you picked. And well, if you look through
18 our 2500 source code files for our entire code set, we use a
19 parameter of four somewhere.

20 THE COURT: And then you've got to go prove that you
21 got it on your own.

22 MR. LANDES: Exactly. And we might not hear that
23 parameter four is the super important parameter until expert
24 discovery, after we've taken the depositions.

25 THE COURT: So when does this occur in the case?

1 When do you guys get locked into what your positions are?

2 MR. LANDES: Well, so --

3 MR. FOX: Not at this stage, Your Honor.

4 THE COURT: I know. When?

5 MR. FOX: When? As -- as the case progresses, we're
6 going to -- they'll file a motion for summary judgment saying
7 no reasonable jury could conclude that the code set, which is
8 one of the categories --

9 THE COURT: Yes. But then they don't want you to be
10 able to come back and say, well, you've said it's A, B and C,
11 but really it's D.

12 MR. FOX: Well --

13 THE COURT: Right? Because they're saying -- I mean,
14 look, I think it's great that you've said your source code,
15 but if you don't find their source code -- but the way I see
16 this --

17 MR. FOX: Umm-hmm.

18 THE COURT: -- is if you don't find the source code
19 in their system --

20 MR. FOX: Umm-hmm.

21 THE COURT: -- then you're out of luck.

22 But what they're afraid you're going to do is you're
23 going to pivot and say, oh, even though the source code is not
24 the same, what it is is the way it's been arranged or you
25 might have modified it in this way to make it look different,

1 but really, you've got these similar functionality.

2 MR. FOX: Well, we're going to learn a lot about this
3 in depositions and in their response to interrogatories.

4 THE COURT: No, but shouldn't it be you that's saying
5 it?

6 MR. FOX: Well, we have said the source code is the
7 information within these lines of code, right? That's our
8 trade secret.

9 To the extent that none of the lines of code, as
10 opposed to the files, they're saying none of the files will
11 match. Well, these files contain thousands of lines of code.
12 They can rename a file. They can change out -- and of course
13 they're going to be -- they're not going to be absolutely
14 identical, but it's going to come down to this question of
15 what is a trade secret. We're saying the code, the way it is
16 arranged are our trade secrets.

17 And what I'm hearing is a merits defense that they
18 have every opportunity --

19 THE COURT: Well, no.

20 MR. FOX: -- to develop and present during merits
21 arguments.

22 THE COURT: Yes. But what they're saying is it would
23 be fundamentally unfair for them not to know what to target
24 during discovery.

25 MR. FOX: Well, we're not going to --

1 THE COURT: If you can just come in later and
2 identify -- because what you've said now is you've conceded.
3 You're not going to find it exactly the same.

4 MR. FOX: It doesn't have to be exactly the same,
5 Your Honor.

6 THE COURT: So I understand that. I'm not suggesting
7 that.

8 But since it can be different, you should have to
9 identify what it is with specificity or with whatever the
10 requirement is because otherwise, how can they know?

11 MR. FOX: Well, Your Honor, if you look at the
12 customer list, we're not going to find that -- well, maybe we
13 will -- but it's quite possible that they've simply taken
14 pieces of information from our customer list or our customer
15 data repositories and used them. Those can be trade secrets
16 in isolation.

17 We can't at the outset of discovery predict what they
18 did with our computer information, just like we can't predict
19 exactly what they did with each of our lines of code.

20 But if they used our code in order to develop their
21 code, we think through forensic analysis, we'll be able to
22 identify that. But right now, they've asked what our trade
23 secrets are, just like our trade secrets on the customer data
24 compilations, it's the information within those compilations,
25 it's the information within our code.

1 THE COURT: So have you put out to them -- so I look
2 at the description in RoadSync web, and I say users to
3 allow -- users to access the functionalities of the software,
4 in a user friendly and industry appropriate way. Those seem
5 pretty wide open.

6 Have you asked them what type of user friendly and
7 industry appropriate way they mean by that?

8 MR. LANDES: Well, we served -- I mean, this was in
9 response to an interrogatory.

10 THE COURT: I know.

11 MR. LANDES: It said describe this with
12 particularity. We also asked for the development history of
13 these trade secrets. I mean, the level of generality that
14 you're seeing is what we've gotten, right?

15 THE COURT: Right. But is that what you would expect
16 to do?

17 MR. LANDES: Is what?

18 THE COURT: To access the functionality, what
19 functionality are you referring to?

20 MR. MOONEY: We're referring to the functionality of
21 the robo dialer functionality, the pay codes functionality and
22 the check printer functionality, but, Your Honor, that's just
23 the English language --

24 THE COURT: Is that new? Is that something you've
25 just learned?

1 MR. LANDES: Well, what he just read was the four
2 categories in the left column.

3 THE COURT: Right. But at least you know now that
4 that's what he's referring to, I guess.

5 MR. LANDES: Well, but what he's referring to,
6 Your Honor, is in this Exhibit C is probably 50 or 60 pages of
7 file names, thousands of files, and so -- and again, I'll
8 bring it back to our expert.

9 He looks at this list and he says, all right, I sit
10 down with the RoadSync source code. I'm looking at all of
11 the -- the source code for their entire web interface. And
12 it's going to be my duty to issue a report about whether
13 there's a trade secret in here to make this user friendly and
14 industry appropriate. And he -- he tells us I don't know
15 where to start.

16 And if they serve us discovery -- remember, the other
17 purpose of the trade secret identification is to be able to
18 evaluate whether the discovery they serve on us is relevant
19 and proportional. If they serve a discovery on us or a
20 discovery request on us that says give us all of your source
21 code that makes your products and services user friendly and
22 industry appropriate, what are we supposed to do with that?

23 How is Your Honor supposed to evaluate what's in and
24 what's out? And that's what the problem is. So this is not a
25 merits discussion, right? I'm not saying --

1 THE COURT: No. I understand that. I don't think it
2 is either. I think you're trying to make sure that you don't
3 get caught at the end of the day not knowing what you're
4 accused of having stolen.

5 MR. LANDES: That's right. And so just briefly --
6 very briefly, Your Honor, Mr. Fox said, you know, what's --
7 what's secret is -- well, it's the arrangement of the code.
8 Well, what -- what arrangement?

9 Is it the arrangement of these 60 files?

10 Is it the arrangement of one tiny piece of one of
11 these files combined with another piece of another file
12 contained with another piece of another file?

13 That's -- that's what we don't know. And there's no
14 reason they shouldn't be able to tell us now what that
15 arrangement is, what the trade secret is. Not just, well,
16 here's all of our code, here's everything, it's in there
17 somewhere.

18 THE COURT: I think they should have to do that. I
19 think they have to do that at some point in discovery. I
20 think you've got to continue to hone in on it.

21 Is everyone here for our 1:15?

22 COURTROOM DEPUTY: I believe they may be outside, and
23 I believe that may have been what the marshal was sitting here
24 for.

25 THE COURT: Are they outside?

1 MS. DUTCHER: Mr. Olivera is in custody, but I'll
2 check to see if Ms. Alterman is here.

3 THE COURT: Would you see if they're ready to bring
4 him up?

5 I had an 11:15, and this young lady, it's her last
6 day in the office, and I don't want to keep her waiting when
7 she probably wants to say good-bye to people and packing.

8 MS. DUTCHER: I'm so happy to be in Court. Ms.
9 Alterman does not appear to be outside.

10 THE COURT: Defense counsel?

11 MS. DUTCHER: Yes, that's right.

12 THE COURT: Okay. Well, as soon as we hear from
13 them, will you just find out if they're downstairs ready to
14 bring him up, and then we'll just take a break at that point,
15 okay?

16 I mean, I don't --

17 MR. FOX: And, Your Honor, speaking to their request
18 that we make some showing of good cause. I note that in the
19 earlier conversation, Your Honor had a preference, and we
20 share that preference at least with respect to this issue, to
21 proceeding in the normal course of discovery.

22 And in the normal course of discovery, not only are
23 we able and permitted to supplement interrogatory responses,
24 we're indeed required to supplement interrogatory responses
25 under Federal Rule 26E.

1 To the extent that, as Your Honor suggested, we find
2 that another customer data compilation was taken, we will
3 supplement our interrogatory responses to capture that.

4 We -- arguably, it falls into some of our
5 descriptions of our trade secrets, but we've been -- we've
6 gone to great effort to be as specific as possible.

7 And one of the things we did to do that was to
8 identify certain files and the information within those files.
9 If we learn that there was a new file taken, it still falls
10 under customer data compilations, which is what we identified
11 in our complaint, but we should be able to, without having to
12 go to the Court and make a special showing that's not required
13 under the rules, to say the information within that file as
14 well.

15 THE COURT: I do think that identifying the files and
16 the functionality is what they're required to do at this time.
17 I think you have to go through the discovery you need to go
18 through to get additional clarity, if you think you need it.
19 And that might mean adjusting the discovery process to make
20 sure that you have everything you need to give to your expert.

21 But I do think that the plaintiff ought to be
22 required and will be required during the discovery process to
23 explain this more.

24 Won't you, Mr. Fox?

25 MR. FOX: Well, the more we learn about how we

1 contend our code set was used, whether we're revealing it or
2 whether the evidence that is shared reveals it, ultimately,
3 that's where we're going to be heading and that's where the
4 case is going to go.

5 The objections we're hearing really don't deal with
6 this threshold showing. They deal with these merits defenses,
7 that this can't be a trade secret, as opposed to the exercise
8 we're going through today, which is just identification of
9 what the trade secrets are.

10 I mean, I hear defenses like, oh, it will only be a
11 couple of lines and it's open source. Well, that's a defense
12 that has nothing to do with the identification under the
13 rules -- under the authority in the Northern District.

14 THE COURT: Say that again. Open source?

15 MR. FOX: What I'm hearing is down the road they're
16 afraid that we're going to say, well, it's just this one line
17 of code and they're going to say well, that's an open source
18 line that we developed independently or it should be open and
19 obvious. I mean, that's kind of where the language that I'm
20 hearing is headed. But those are defenses down the road and
21 they don't speak to the threshold showing that we have before
22 us, Your Honor.

23 MR. LANDES: Your Honor, if I could briefly respond.

24 THE COURT: Yes.

25 MR. LANDES: And I know that you hear me on this, but

1 that really isn't what we're concerned about. Like my concern
2 is that when we depose their witnesses, right, it's -- you
3 know, again, Your Honor, this is double-sided, but it's 800
4 pages. I can't ask about every line in here. The source
5 code, it would probably be thousands of pages if we were to
6 print it out. I can't ask about every line.

7 We need to know what we're targeting here. And
8 what's at issue. And that can't be something that's a
9 guessing game. Right?

10 And it can't be something that's defined only after
11 they've had the opportunity to root through all of our files
12 for everything that might relate to being user friendly and
13 industry appropriate. We need to know what the case is about.

14 MR. FOX: But, Your Honor, those terms are further
15 narrowed by our production of the actual code. We're not
16 saying, you know, the concept of user friendliness or even the
17 concept of these functions. It's as narrowed by the code
18 that -- that makes that functionality possible.

19 And we've produced, as of I think two days ago, every
20 version of this code in existence, not just the code during
21 the period that the defendants left the employ of RoadSync.

22 THE COURT: So I'm looking at -- I think one of
23 you-all cited the *WeRide* case.

24 MR. FOX: Um-hmm.

25 THE COURT: And that case said pretty clearly, and

1 it's not binding of course, but identifying lines of codes or
2 files named was enough.

3 MR. FOX: And, Your Honor, if I might add.

4 THE COURT: Yes.

5 MR. FOX: That is under --

6 THE COURT: No, that's under California law?

7 MR. FOX: Yes, which is a stricter standard.

8 THE COURT: Yes.

9 MR. LANDES: So, Your Honor, the *WeRide* case, I'm
10 familiar with that. I was lead counsel on that case. If you
11 look at the trade secret identification, I signed it, so I'm
12 very familiar with that case. I argued a hearing just like
13 this one.

14 First of all, it was --

15 THE COURT: Did you win?

16 MR. LANDES: We did win. As the plaintiff, we got
17 terminating sanctions, because as the Court said, the
18 spoliation in that case was staggering, but that's an issue
19 for another day.

20 The trade secret identification in the case and the
21 decision that's cited there, first of all, it was not under
22 the California State standard, it was asking whether the
23 California standard would apply to the DTSA, all right, so it
24 was a DTSA claim. The Court said I don't need to decide that
25 because this meets the standard regardless, this means the

1 DTSA standard.

2 The Court described that trade secret identification,
3 you can see a redacted version on the docket.

4 THE COURT: Yes, I couldn't find much else on it.

5 MR. LANDES: Okay. We'd be happy to submit it to
6 Your Honor. I don't have the document --

7 THE COURT: You're saying it takes lot more than they
8 did here?

9 MR. LANDES: Yes. It was 20 pages long. That's
10 noted in the opinion.

11 THE COURT: Yes.

12 MR. LANDES: It describes the functionality of the
13 files, and it describes -- this is noted in the Court's
14 opinion, Judge Davila's opinion. It describes what's in and
15 what's out. It says, well, these are the processes that we
16 acknowledge are public, that's not included.

17 But this separate piece that is within -- within it.
18 And then it lists a limited -- not thousands of files, but a
19 limited number of files. And that was further supported,
20 Your Honor, by probably a 40-page expert declaration going
21 through the files in excruciating detail and separating what
22 was trade secret from what was not.

23 THE COURT: All right. You hit on exactly where I
24 came to in that opinion, which is where he describes the
25 20-page file -- well, he logs the 20-page filing --

1 MR. LANDES: He notes it.

2 THE COURT: -- as so much. And I just couldn't find
3 out what it showed.

4 MR. LANDES: We'd be happy to submit that,
5 Your Honor. I don't have it with me, and I apologize I don't
6 have the docket cite, but I was actually reviewing it
7 recently.

8 THE COURT: I think that this could use more briefing
9 on this. You-all have gone through the process we've gone
10 through, but I'd like you to go through a larger motion to
11 compel.

12 The reason for that is twofold, is I recognize both
13 of your concerns that we are just at a pleading stage right
14 now, we are not at summary judgment yet and a lot needs to be
15 done before you can get to that.

16 I'm also concerned with the defendants wanting to
17 avoid the fact where they get all the way down the line and
18 they think they've been looking at the right thing and all of
19 a sudden, they should been looking to the left rather than to
20 the right.

21 I'm also, frankly, not -- plaintiff has not disabused
22 me of that later concern, that this is going to be fully
23 explained and highlighted in a way during the discovery
24 process.

25 And I did exactly what you-all were describing, I

1 sort of ran into that wall in preparing in that I can't see
2 another case that shows exactly what it is. It's great to say
3 providing the source code and giving an example or describing
4 the functionality is one thing, but it's another thing to say
5 what that is, or the level of the detail of it.

6 MR. FOX: Your Honor, if I may.

7 THE COURT: Yes.

8 MR. FOX: I want to make sure that we're clear on the
9 issues that we're discussing. We've identified customer
10 lists, prospective customer lists and customer data
11 compilations.

12 Do you want further briefing on that issue? I think
13 the record and the case law is really clear that what we've
14 done should satisfy with respect to that category --

15 THE COURT: I think it does, too, and -- well, why is
16 that one -- well, we haven't heard anything about that yet. I
17 want this on the source code, because I am concerned with the
18 relatively benign description that has been provided so far
19 of, you know, it helps with -- it makes it user friendly. I
20 mean, that's pretty vague. I assume that there was more than
21 that in front of Judge Davila, because he was pretty impressed
22 with it, but I don't know.

23 MR. FOX: If I could just frame some context in one
24 of our concerns is with respect to both the customer list and
25 the source code, we understand that Your Honor would

1 appreciate additional briefing on this and we're happy to do
2 that.

3 Our concern is that we've received -- they stand --
4 they've stood on their objections to our identification of the
5 trade secrets and haven't produced any responsive discovery on
6 trade secrets and they haven't actually produced any other
7 documents in the case thus far.

8 Our concerns are growing as discovery is scheduled,
9 fact discovery is scheduled to close on July 13th. The normal
10 briefing schedule would put us out another month.

11 THE COURT: I don't need that. I can give you-all
12 ten days and then you-all can have ten days to respond.

13 Okay? Does that make sense?

14 MR. LANDES: Yeah, absolutely, Your Honor.

15 THE COURT: If you need a couple more, let me know,
16 but I don't need a lot. You can provide me additional cases
17 or an example of how this one is deficient to something that's
18 been found to be sufficient. That would be the most helpful.
19 Or something from your expert that tells me exactly what he
20 says he can't do or from an expert that tells me what he can
21 do. That's kind of the thing that I'm looking for.

22 Okay?

23 MR. LANDES: Understood.

24 THE COURT: All right. I understand discovery. I
25 really don't want to be a delay in it. Does this really have

1 to stop all of the other discovery?

2 MR. FOX: We don't believe so, but we have claims
3 outside of our trade secret claims, they still haven't
4 produced any documents. If --

5 THE COURT: Why not? Why not?

6 MR. FOX: -- this briefing is just limited to the
7 source code, then -- and Your Honor rules that our
8 identification and trade secrets with respect to the other
9 categories is sufficient, then that would extinguish their
10 objections with respect to discovery requests on those bases
11 and we would hope that discovery starts moving forward.

12 They haven't even committed to a date upon which
13 their production will begin on the non-trade secret claims.

14 MR. LANDES: So, Your Honor, I'll note that the
15 parties have been meeting and conferring about discovery.
16 There's material we've agreed to produce, just as there's
17 material that the plaintiff has agreed to produce.

18 We're still in the process of negotiating the -- I'm
19 sorry -- the scope of the requests and what will be produced.
20 We have to discuss things like search terms and custodians and
21 that process still needs to occur.

22 The only thing the plaintiff has produced, to my
23 knowledge in this case, is the collection of documents that
24 were alleged to be downloaded. But no one's done an email
25 search, no one has discussed custodians or search terms, we're

1 open for that discussion.

2 And our concern, the reason that the trade secret ID
3 is always required before discovery is there's this concern of
4 a fishing expedition.

5 THE COURT: I understand.

6 MR. LANDES: Right? And so when we see a discovery
7 request that says send us all of your communications with all
8 of your customers, right, that's a problematic request when we
9 don't know what the trade secrets are ahead of time. Right?

10 When we see an RFP that says give us all of your
11 business plans. Give us every communication between the
12 individual defendants over a 14-month period, all of them,
13 before we have an identification of what's at issue in this
14 case, that is a problematic request.

15 Because the concern is that once we produce, you
16 know, if we're ordered to produce 14 months of email
17 communications, and text message communications, and social
18 media communications between two people, then all of a sudden,
19 I suspect they'll be able to tell us what the supposed trade
20 secrets are. And it's whatever we were discussing, right? It
21 will be reverse engineered. And that's why the trade secret
22 ID has to come first.

23 THE COURT: Well, let's talk about the other trade
24 secrets, the customer lists, perspective customer lists and
25 data. What's your problem with that?

1 MR. LANDES: So I --

2 THE COURT: I know there's a lot of pages.

3 MR. LANDES: I agree it's a lot of pages, Your Honor.

4 THE COURT: And that's okay.

5 MR. LANDES: This is -- well, this is the problem
6 that gets raised in other cases, right, which is it sort of
7 becomes this needle in a haystack issue.

8 And we have all of these different lists that are
9 filled with names of companies in the industry, they have
10 different names, they have different customers, they have
11 different dates, they have different websites, right?

12 And I don't know what in here is relevant to this
13 case, especially when we're told, well, the trade secret isn't
14 just these lists, right?

15 It's not just the lists, but it's every piece of
16 information within all of these lists, and it's every
17 combination, possible combination of information within these
18 lists, right?

19 That doesn't allow us to determine relevance of
20 discovery and it doesn't -- it doesn't allow us to prepare a
21 defense and it doesn't allow Your Honor to manage the case at
22 the summary judgment stage, for instance, right?

23 So anyone can find a list of the top players in the
24 industry. Anyone can do that, right?

25 THE COURT: Well, why don't you just take a

1 deposition and ask somebody?

2 MR. LANDES: Well, because, Your Honor, this is -- I
3 mean, again, 800 pages single-spaced. Is this deposition
4 going to be three weeks long as I go through and ask? Right?

5 That's -- that's the problem. And so we'll -- we
6 will take a deposition and we will show that this material,
7 right, is -- you know, is public, was public, was not valued
8 by the -- by the plaintiff, they didn't take reasonable
9 measures to protect it.

10 I have -- I have a very strong feeling RoadSync
11 doesn't even know what half of these documents are. We will
12 show that in depositions.

13 But what we don't want to see, and Your Honor keeps
14 bringing it back to this, is after we've -- we've done all of
15 that, we've gone through that process, it's some combination
16 of material in here that they could have identified at the
17 outset but that we only learn about in an expert report after
18 we've lost the opportunity to depose their 30(b)(6) witness.

19 Or we only find out about it in an opposition to a
20 summary judgment motion after discovery is closed. Right?
21 Sort of this gotcha, ah-ha moment. You didn't realize that
22 what we were really talking about was this line item.

23 MR. FOX: Your Honor, just to be clear, this is not
24 public information. Some of the information, the names of the
25 companies may be public, our compilation of them and, you

1 know, if you look at some of the fields in the data,
2 Your Honor, we have month-by-month transaction histories with
3 our customers, we have revenue numbers that were generated
4 from each of those customers.

5 Use of this information would allow them the ability
6 to prioritize what customers they're going to call on, would
7 allow them to, you know, undercut pricing. This is incredibly
8 valuable stuff. This isn't off-the-shelf lead lists.

9 Even our list of perspective customers include when
10 those customers were contacted by us, the decision makers and
11 the contacts within those customers. This is -- these are the
12 outputs of what would effectively be, you know, a fully
13 featured, customer relations management system.

14 THE COURT: I just think that these lists are fairly
15 within the main of trade secrets cases, and it may be onerous,
16 and it may be that these depositions take a while, but I think
17 you can get what you're looking at on the customer lists in
18 that way.

19 And so I don't see the threat that when you get
20 there, they're going to pivot to something else, as I -- as I
21 do with the code.

22 MR. LANDES: So I would say, Your Honor, first of
23 all, maybe I'm a pessimist, I don't share your optimism on
24 that.

25 THE COURT: I know.

1 MR. LANDES: What I would request, Your Honor, is
2 that this be included in the further briefing and at a minimum
3 what be included is the question about whether they can amend
4 or what showing they would have to make in order to amend to
5 add more detail later.

6 THE COURT: Well, we just put out an order on that,
7 didn't we, in another case about amending late?

8 LAW CLERK: Amending a complaint.

9 THE COURT: Yes, but it's kind of the same thing.
10 It's kind of the good cause standard.

11 MR. FOX: But not to amend the interrogatory
12 responses.

13 THE COURT: I understand. I understand. But if you
14 sit on it you get to the end of the day and all of a sudden
15 you pop something on them that you should have done a long
16 time ago, I think there's something I could say about that.

17 MR. FOX: They can raise that at the time,
18 Your Honor.

19 THE COURT: Yes. So I don't think I'm going to put
20 them on a clock now, but I hear what you're saying. That they
21 ought to know what these things are. They've come up with all
22 of these things, if they want to add another 800 pages later,
23 they ought to have some explanation for why they're doing it
24 later.

25 MR. LANDES: And not -- not just adding the 800 pages

1 later, Your Honor, which we're concerned about --

2 THE COURT: We're saying it's something else in here.

3 MR. LANDES: Yeah, telling us later, well, it's not
4 all 800 pages, it's really these one or two lines over here.
5 That's what we're really talking about.

6 MR. FOX: Your Honor, we'll say today it's not all --
7 it could be all 800 hundred pages, but they would have
8 misappropriated our trade secrets if, you know, four of the
9 pages of our customer histories they used. Now, what would
10 the resulting damages be if it were only four pages? Well, it
11 would be much different than if it were 400 pages. But it
12 wouldn't undermine our claim. We've appropriately identified
13 it to the extent that we need to at this point in the case.

14 THE COURT: I think that's right. I don't think I
15 need more briefing on this. I think they have done enough in
16 identifying these lists. These are not remarkable type of
17 trade secrets claims. If you get to a point in discovery
18 where you don't think you're getting clear lines, then we can
19 talk about what to do in that regard.

20 Because I do think that the plaintiff is required to
21 provide those clear lines in the way that the defendant is
22 asking for them during the scope of discovery. They are
23 entitled to know that of which they are accused. And not be
24 left to learn it in response to summary judgment.

25 But if you don't get it, we can adjust at that time.

1 But I don't see how I can make them do that now when we're
2 just at the start of the discovery process.

3 Okay?

4 MR. LANDES: So, Your Honor, and maybe this is
5 something that we explore in the briefing, but I think what
6 might be helpful is an early 30(b)(6) deposition.

7 THE COURT: I was thinking the same thing.

8 MR. LANDES: Now, my concern, and I know with the
9 30(b)(6) --

10 THE COURT: Didn't I give you-all one?

11 MR. LANDES: Well, you gave them one.

12 THE COURT: I gave them one?

13 MR. LANDES: Well, you gave them one, yes.

14 THE COURT: That didn't count for later.

15 MR. FOX: That didn't count.

16 MR. LANDES: That didn't count, and so that's what I
17 was going to get to is if we could get a 30(b)(6) deposition
18 on these customer lists that doesn't count, so that we can try
19 to get some understanding of what we're actually talking about
20 here.

21 THE COURT: Well, let's not do that yet. I think go
22 through some discovery, but I think you're on the right
23 thinking about that. If you get to a point where you think
24 that's necessary, then we can talk about that.

25 You'll have a chance to do 30(b)(6) depositions.

1 MR. LANDES: Yes.

2 THE COURT: But if you think that one would be
3 helpful earlier --

4 MR. LANDES: I do, Your Honor. I do, Your Honor.

5 THE COURT: I know, but see, they may not be fully --

6 MR. LANDES: And again, Your Honor, I have a feeling,
7 I have a strong feeling that a lot of the answers to the
8 30(b)(6) deposition is going to be I don't know if this is off
9 the shelf. When they're under oath, and when they have to --
10 when someone has to testify how these came into existence and
11 what happened with them and how RoadSync used them, there's
12 going to be a lot of I don't knows until they see our customer
13 list.

14 And then, and then, all of a sudden, there will be a
15 moment of clarity about what within these lists is supposedly
16 so special. And that's what we want to avoid.

17 And so I think it's important to get them on record
18 ahead of time about what these are, where they come from, and
19 what's so special about them.

20 THE COURT: But if that happened, let's say they were
21 to see to your list and then say, ah-ha, that's from us, would
22 your defense be, no, we got that on our own? Or would it be,
23 no, that's not a trade secret?

24 MR. LANDES: In most instances --

25 THE COURT: We took it from you, but it's not a trade

1 secret.

2 MR. LANDES: I think -- well, I think the took from
3 you is sort of a question, right? So it has to be
4 misappropriation, which is the second step of a trade secret.
5 I think in most instances, these aren't trade secrets, right?
6 And they weren't misappropriated, right? So the names of
7 these customers, you can go online --

8 THE COURT: Yes.

9 MR. LANDES: -- RoadSync advertises who its customers
10 are. And the information in here, they're websites, right?

11 So now look, if they tell us the thing that's
12 special, obviously we know that Coyote Logistics is a big
13 player in this industry. Obviously we know their website is
14 the www.coyotelogistics.com.

15 THE COURT: I could call and find out who the contact
16 is.

17 MR. LANDES: You could call or look on LinkedIn,
18 right? But that's not the trade secret.

19 The trade secret is having Coyote ranked as Number 3
20 in combination with having these 11 other players ranked as
21 one through 12. That's what the trade secret is. Right?

22 Because, you know, look, Your Honor, it's in the --
23 you can see it in Mr. Droege's deposition transcript. We've
24 had discussions with Coyote Logistics, we've had discussions
25 with other players. It's inevitable, right? It's like

1 saying, well, Amazon is on our vendor list, right? Yes, we
2 order supplies from Amazon.

3 THE COURT: Yes.

4 MR. LANDES: But so it's a combination where we
5 really don't know where we're aiming, and so I think it would
6 be helpful to know, even in a 30(b)(6) deposition or, you
7 know, whether it's in some other form of further discovery,
8 where we should be targeting this, because we are going to be,
9 you know, challenging this on a number of fronts, right?

10 And Your Honor got this I think right at the head of
11 the hearing. This is not a noncompete case. We were allowed
12 to work with these customers. And so they should be able to
13 tell us what we're not allowed to do.

14 And if it's that you're not allowed to use these --
15 these actual files, you can't take this binder and sift
16 through it, that's fine, right? There will be no evidence
17 that we took this binder and sifted through it. That won't
18 show up.

19 But maybe it will be something like, well, you
20 called -- you know, you called John Smith at Walmart and
21 that's the trade secret, calling John Smith at Walmart. How
22 did you know to call John Smith at Walmart, right?

23 And maybe we don't have perfect records of how we
24 knew to call John Smith at Walmart. But we can't do that
25 10,000 times for everyone on this list and everyone we've ever

1 contacted. And that's -- that's what the problem is.

2 THE COURT: I mean, all of those sound like
3 appropriate questions at the right time, don't they?

4 MR. FOX: What I'm hearing is we're going to have
5 some defenses if the evidence works out.

6 THE COURT: But aren't the questions that he's asking
7 appropriate questions to ask at the right time?

8 MR. FOX: In a 30(b)(6) at the right time, in the
9 normal course of discovery. They haven't produced and they
10 are standing on their trade secret identification objection,
11 any discovery responses dealing with trade secrets.

12 THE COURT: Why shouldn't you as the plaintiff have
13 to have the first 30(b)(6) deposition and tell them what's so
14 special about this list?

15 MR. FOX: Well --

16 THE COURT: You already know. It's your secret.

17 MR. FOX: We know what's special about the list,
18 we -- we have every right to know what -- in the normal course
19 of discovery, what they've taken from our list. We -- you
20 know, he's making the representation none of the files were
21 taken, as far as the full files, like these big Excel
22 spreadsheets.

23 Assuming that's the case, well, that's not the sum of
24 our trade secrets. Our trade secrets are all the call
25 information, the month-by-month revenue.

1 If at the end of the day we find that they have
2 developed all their customer call sheets, based upon publicly
3 available information, which I hear is a defense that they may
4 very well be trying to roll out, fine. But that's a merits
5 defense.

6 We've stated, you know, under all of the case law
7 producing all of this information and saying it's not the
8 files, it's the information within those files.

9 THE COURT: Yes, I know. I'm with you on that. But
10 I'm just saying that, you know, now that we're in discovery --

11 MR. FOX: Umm-hmm.

12 THE COURT: -- why not let your guy go first?

13 MR. FOX: Well, have they noticed our deposition? I
14 mean, we have already served them with discovery that they
15 haven't responded to.

16 THE COURT: Have you noticed a deposition?

17 MR. LANDES: Well, we -- this is the issue. We don't
18 want to use our one 30(b)(6) right now.

19 And I will say, Your Honor, Interrogatory Number 1
20 it's in front of you, Interrogatory Number 1, because it's the
21 first one: Describe with particularity and individually each
22 alleged trade secret you contend defendants' misappropriated,
23 so forth and so on.

24 Your description must be with sufficient
25 particularity to allow defendants to meaningfully compare and

1 distinguish each asserted trade secret to information that is
2 generally known or readily ascertainable and to permit the
3 parties in the Court to understand what specific information
4 you claim to be trade secret.

5 And what did they do? They sent us this binder, and
6 said that it's in there, that's it.

7 MR. FOX: Your Honor, meeting the reasonable
8 particularity standard that we're here to discuss and that was
9 the nature of the joint statement that was filed with the
10 Court is a separate issue than whether they are satisfied with
11 our interrogatory response.

12 MR. CAPLAN: Your Honor, may I be excused for a
13 moment to use the restroom?

14 THE COURT: Yes. Anybody else want a break for a
15 minute? Okay.

16 MR. LANDES: And I'll also point Your Honor to
17 Interrogatory Number 3: Identify specifically and
18 individually each piece of information or combination of
19 information contained within your customer lists or
20 compilations that you contend is a trade secret. To the
21 extent the response incorporates a document, state
22 specifically what information or combination within each
23 document you contend is a trade secret.

24 And it's a -- that response is effectively a copy and
25 paste of Interrogatory Number 1 that says look at the binder.

1 So, I mean, you know, I could sit someone down in a
2 chair at a deposition and read these interrogatories to them,
3 but this is an interrogatory-type question, and to the extent
4 they think it's a deposition question, we can do it there, but
5 I don't want to burn my one -- or defendants' one 30(b)(6)
6 deposition asking them to -- to, you know, talk about an
7 interrogatory response.

8 MR. FOX: As Your Honor has noted, there is nothing
9 exotic about customer lists.

10 THE COURT: No. The point is, though, is that he
11 asked for a lot of stuff there. And all you said was here's
12 the list.

13 MR. FOX: We've identified the data, artifacts within
14 our customer list, we've identified the data artifacts within
15 our customer data compilations, and our perspective customer
16 list. If they at the appropriate point want to take a
17 30(b)(6) deposition and ask us, you know -- apparently they
18 want to ask us if -- how we developed those lists. We're
19 prepared to respond to that.

20 THE COURT: So you say in customer lists, customer
21 names, addresses, contacts, decision makers, contact history
22 and potential revenue for warehouses handlers and carriers,
23 that's your trade secret.

24 MR. FOX: Those are the fields in the customer list,
25 Your Honor.

1 THE COURT: Those are the fields. Oh, okay. I guess
2 I didn't understand that's that what you meant by lists, or
3 that includes. You're not saying those are the trade secrets,
4 you are just saying those are the fields.

5 MR. FOX: No, that each -- like this -- this concept
6 of a trade secret, it isn't all one trade secret, but it is a
7 trade secret that exactly what a particular customer bought
8 from us on any individual month, that's -- if -- you know,
9 they're going to have their defenses, where they're apparently
10 going to say that we didn't, you know, restrict the data or
11 that it's from publicly available sources. That's a separate
12 merits defense. I mean, this isn't a discovery fishing
13 expedition. We think they took these categories of
14 information.

15 THE COURT: I know.

16 MR. FOX: And are using them.

17 THE COURT: Well, you're not asking for anything in
18 this. It's not you that's fishing.

19 MR. FOX: Um-hmm.

20 THE COURT: I'm not suggesting that you are.

21 MR. LANDES: Well, no, but Your Honor, we are facing
22 discovery requests that say --

23 THE COURT: Yes.

24 MR. LANDES: -- give us a list of all of your
25 customers, all of them. Give us all of your sales records for

1 all of your customers, all of them. Give us all of your
2 marketing history to all of your customers, all of them.

3 Not -- not the individuals who are listed in here,
4 and I'll note, Your Honor, if you -- if you thumb through the
5 30 or 40 spreadsheets in here, they don't all have these
6 fields, right?

7 THE COURT: Yes.

8 MR. LANDES: And they have conflicting information
9 for, you know, who supposedly is the key contact or key
10 contacts, it's different. I mean, it doesn't say key contact,
11 there's just sometimes an email address.

12 THE COURT: Yes.

13 MR. LANDES: But it's not consistent across the
14 spreadsheets, right? And so that's -- that's the rub, right?
15 That's where it becomes challenging, because we are facing a
16 fishing expedition. The same we have a request that says give
17 us your entire laptop and hard drive. Give us all of your
18 source code.

19 We're facing the same thing on the customer front.
20 Give us everything about all of your customers and then --
21 then you can depose us and we'll tell you what we care about.

22 MR. FOX: Your Honor, we've already addressed one of
23 the complaints I just heard, which is we've asked for their
24 customers, and he said it's not limited to the customers in
25 these data compilations. In a conferral, I believe last week,

1 they asked if we would limit it and we said yes, accordingly,
2 we will.

3 THE COURT: How many customers are there in those
4 lists?

5 MR. LANDES: So, well, it depends on what you mean by
6 customers, Your Honor. So how many actual customers does
7 RoadSync have that might be at issue in this case? I don't
8 know that number, maybe it's dozens.

9 How many company names are in these spreadsheets,
10 probably hundreds, maybe thousands. Relay has, I believe,
11 tens of thousands of customers, if you define it in the
12 broadest sense. Right?

13 And so a lot of these are not -- they're not -- this
14 is not an export from a CRM system. Some of these really are
15 just spreadsheets of industry players, so it's just a list of
16 everybody.

17 And so it's, you know -- if it really is, well, it's
18 just everyone in the whole industry, tell us everything about
19 everyone in the whole industry, you can't proceed in a case in
20 that fashion.

21 THE COURT: Well, I can see where this is going in
22 terms of other discovery disputes. And I'm glad you-all agree
23 that the defendant is not required to produce information
24 about all of their customers. That seems to me to be overly
25 broad.

1 And that what the plaintiff is entitled to do is to
2 determine whether or not customer lists that contain protected
3 information were used by the defendant, so it seems like it
4 would be limited to that.

5 MR. FOX: Just on a -- Your Honor, you know, the
6 number of the cases say that the general concern that, you
7 know, your competitor is going to be asking for all of your
8 customer contact information, and that's one of the reasons
9 that we require this reasonable particularity standard, that's
10 protected for by attorney's eyes only designation.

11 THE COURT: Yes.

12 MR. FOX: We have no problem, our clients are not
13 going to have access to these documents.

14 THE COURT: I understand. But you've already agreed
15 to that?

16 MR. FOX: Yes, Your Honor. And the cases say that
17 alleviates this concern for competitive misuse of the data.

18 THE COURT: No. You've already agreed to limit it to
19 the customers in your lists?

20 MR. FOX: Yes.

21 THE COURT: So I need not address that issue, because
22 otherwise, there is also just the question of the burden.
23 Regardless of how it could be weaponized. Because I agree
24 with you that a protective order can prevent the
25 weaponization, but that still doesn't do away with the burden

1 or just that it's beyond the appropriate scope of discovery.

2 Okay. I mean, I am inclined to allow the defendant
3 to have a 30(b)(6) deposition, in which they can seek to
4 identify this information. When that ought to be, I don't
5 know.

6 I gave the plaintiff an early deposition that didn't
7 count, because I thought it would advance things. And I think
8 that doing that here would advance things.

9 But I don't want to put a schedule on it, because I
10 do want to make sure that the plaintiff has an opportunity to
11 prepare for it. But I think that could be done in the next 30
12 days. And I think that could move things along.

13 It seems to me as though there's a lot of unknown and
14 there's a lot of jockeying going on of who is going to show
15 who their data first in order to either -- I mean, the way
16 that y'all have put it is that you're going to adjust to what
17 you hear. You're going to learn something and then adjust
18 your allegations to what you hear. But that just will freeze
19 everybody. And this might break through it. And also there
20 is a lot in those documents.

21 MR. FOX: Um-hmm.

22 THE COURT: And I have a feeling that it's not quite
23 so difficult and confusion. I mean, I don't know. I've
24 worked with a lot of companies, and if there is something
25 there that's crucial, I think somebody can probably explain it

1 without too much difficulty.

2 It doesn't seem to be like the source code, where
3 apparently I've got an expert that's saying he can't do
4 anything with what he's got. That's what I'm concerned about
5 in the source code is the inability to do something with what
6 the person has.

7 So you-all decide when you want to do the 30(b)(6) in
8 the next 30 days. And one thing that that ought to do is when
9 that's completed, that ought to alleviate the logjam of the
10 defendant not producing documents, because then the defendant
11 ought to begin producing documents. Okay?

12 MR. FOX: In the interim, Your Honor, will they not
13 be producing documents? Are they still going to --

14 THE COURT: Well, if they have other things that are
15 ready to be produced that are not about this, yes, discovery
16 ought to be moving. If you have documents that you agree
17 should be produced that are responsive, they ought to be
18 produced. There's no reason to wait for everything. And I
19 suppose including customer lists that have to do with these
20 customers, why can't you produce those now?

21 MR. LANDES: So I guess it would depend what the
22 request is, right?

23 So again, if we're talking about, you know, producing
24 our entire customer list.

25 THE COURT: No, no. The customer list, they've

1 agreed to limit it to this group of people identified in
2 the --

3 MR. LANDES: So again, the group of people here is,
4 you know, in some of these documents thousands -- hundreds and
5 hundreds of names, so if it's produce everything you have
6 about everyone who's even mentioned in one line on this
7 spreadsheet -- in any one of these spreadsheets, that's a --
8 it's a big imbalance.

9 THE COURT: Is that what you want?

10 MR. MOONEY: Your Honor, I've been part of the meet
11 and confers this week, but no, we've not asked for that.

12 THE COURT: What do you want?

13 MR. FOX: We had very specific requests that go to
14 certain types of information about certain customers. We did
15 have a discussion last week along the very lines that we've
16 talked about here, which I think was -- I personally agreed we
17 could begin with only the customers that are identified in
18 that binder.

19 We're happy to talk to them about those requests, but
20 again, I just wanted to emphasize something that Your Honor, I
21 think, is well aware of, but discovery has effectively not
22 started. We don't even have an agreement -- this is the first
23 I've heard that they're agreeing to produce any specific
24 documents.

25 Because throughout these meet and confers, we've not

1 gotten assurance that any documents are going to be produced
2 in response to any requests for production.

3 It seems that this trade secret issue is the -- is
4 the holdup and nothing happens until it's resolved, so I
5 understand we're briefing the source code issue.

6 We are, of course, happy to go forward with the
7 30(b)(6) which, you know, could have been noticed at any time.
8 But I guess we just wanted some clarity around that, the
9 subject that Your Honor thought -- or subjects Your Honor
10 thought that might cover, whether there's a ruling on the
11 customer lists and compilations in the interim, what happens
12 with discovery until that point.

13 THE COURT: I think discovery ought to be moving
14 along. I don't think that it ought to be -- especially, if it
15 has to do with customers and customers in those lists. If you
16 want to give them -- if you want to put them in more of a box,
17 you could give them the specific customers you're interested
18 in right now.

19 He's saying that it's hundreds -- dozens or maybe
20 hundreds. Well, give him a list of the 25 that you want now.
21 And why can't we just get going? Right?

22 MR. MOONEY: We could certainly help to prioritize it
23 to get things going, Your Honor. As far as, then, this
24 request for additional particularity on the customer lists,
25 prospective customer lists and data compilations, it wasn't

1 clear to me where I -- Your Honor had said a few times, I
2 think, that you were inclined to believe that we had met the
3 burden, but I know there was a request that we brief that
4 issue.

5 THE COURT: I don't think so. I think your customer
6 list and data -- I want briefing on the source code.

7 MR. MOONEY: Source code, got it, Your Honor.

8 THE COURT: I think the rest are clearly identified.

9 MR. MOONEY: Understood.

10 THE COURT: The holdup I see is the dispute about
11 whether they're sufficiently identified is causing a logjam in
12 discovery. I think from what I'm hearing one thing to
13 alleviate it would be to allow an early 30(b)(6), additional
14 30(b)(6) deposition, so they can have some clarity on what
15 exactly your claim is as to some of these lists or as to these
16 lists.

17 But in the interim, there's no doubt that there's
18 some number of these customers that are going to be at issue
19 and so why don't you give them -- but the only thing I've
20 heard from them, from the defendant is that there is so many
21 of them.

22 Well, give them a list of 25 or 30, or whatever
23 the -- you know, the 80/20 rule? 20 percent of your customers
24 are going to be the most -- are going to account for
25 80 percent of your revenue or whatever. Give them that, some

1 number of them that's that 20 percent that really are the ones
2 that are going to be pushing everything along. And then they
3 really don't have an argument for not producing that, do you?

4 MR. LANDES: Well, I mean, it depends on the
5 particular request, right.

6 THE COURT: But I doubt they do.

7 MR. LANDES: Yeah, not every communication with every
8 customer is necessarily relevant, but I think that would be a
9 very good start.

10 MR. FOX: The difference between what's discoverable
11 and what's relevant.

12 THE COURT: Right, right.

13 MR. LANDES: Right. Understood.

14 MR. FOX: And so --

15 THE COURT: And if you have a logjam, come back to me
16 quickly. But I do think that discovery ought to be moving. I
17 do think it ought to be going along. I think that as you do
18 that, you'll get a lot more clarity. And things that
19 everybody thinks matter so much might not matter so much at
20 all.

21 But I think that if you have requests for specific
22 information about some number of customers, that's a great
23 place to start, because you-all have a right to know whether
24 or not they were targeting your customers using your trade
25 secrets, and that's a good way to start it off.

1 Okay?

2 MR. MOONEY: Understood, Your Honor.

3 MR. FOX: Yes, Your Honor.

4 THE COURT: Everybody understand? I know I'm not
5 giving you what those are, but I don't have those specific
6 requests in front of me.

7 MR. FOX: Just one point of clarification, the
8 30(b)(6) deposition that we've been discussing would, as I
9 understand it, be limited to the customer lists, customer data
10 compilations and prospective customer list, categories of
11 trade secrets.

12 THE COURT: Yes, exactly. What are the trade secrets
13 in there. From those things in there, what is it that
14 provides that type of proprietary or important information.

15 Does that make sense?

16 MR. LANDES: Yes, Your Honor.

17 MR. MOONEY: Yes.

18 THE COURT: Sort of like what did your guy do when he
19 left. That's a very finite or limited deposition. Okay?

20 Everybody good on that?

21 MR. LANDES: Yes, Your Honor.

22 MR. FOX: Yes, Your Honor.

23 THE COURT: And look, if you guys get together and
24 you can't figure out what discovery ought to be done now,
25 let's get on the phone, because I do think discovery ought to

1 be moving. The case has been a while and discovery is ready
2 to go, and I think that everybody knows that there is some
3 number of documents.

4 But like I said, I like to take it a bite at a time,
5 so if you've got eight things you want to bring to me at a
6 time or four or three or two, let's do that. We don't need to
7 wait until there is a big problem.

8 Okay?

9 Same thing on the -- how long did I give you on the
10 forensics, the first three steps?

11 MR. MOONEY: The first three steps, the timing is
12 specified in the first three steps, and that takes place over
13 the next month.

14 THE COURT: Well, I won't be the holdup. If you-all
15 get something to me, I'll try to get back to you within the
16 week or the following week to make sure that I'm not the
17 holdup to what to do next.

18 Okay?

19 MR. MOONEY: Understood, Your Honor.

20 THE COURT: All right. Do you want to put a time to
21 talk about the forensics or do you just see what happens?

22 MR. LANDES: I think the parties can confer on that
23 productively, Your Honor.

24 THE COURT: Okay. All right. Anything else?

25 MR. LANDES: I do have one other housekeeping issue.

1 THE COURT: Yes.

2 MR. LANDES: And this has to do with the case
3 schedule and the close of discovery. There's actually two
4 conflicting orders about the close of discovery. There's one
5 that has it, I think, August 2nd and one that has it on
6 July 13th. And those are at Docket 68 and Docket 70. The one
7 that has the August 2nd close of expert discovery is sort of a
8 play-by-play schedule that the parties negotiated.

9 THE COURT: Yes.

10 MR. LANDES: And I think Your Honor entered an order
11 adopting that schedule and also noting a discovery cutoff of
12 July 13th, about two weeks earlier. So there's a slight
13 conflict there, and I'm just not sure what the -- what we
14 should be targeting.

15 THE COURT: I don't know why I did that. I'm sure it
16 was well thought out. But it escapes me as to why. The only
17 issue -- the only uncertainty is the date of the close of
18 discovery?

19 MR. LANDES: Correct. Yeah.

20 THE COURT: What date do you-all want?

21 MR. MOONEY: I mean, Your Honor, we thought it's
22 clear that Your Honor had set this for an eight-month
23 discovery track, beginning 30 days after the answer. That was
24 in Docket Entry 40.

25 Defendants answered October 14th, and so eight months

1 from that -- that November 14th date is July 13th or 14th.

2 THE COURT: So it appears all I did was calculate
3 exactly what is eight months rather than pick the date y'all
4 did.

5 MR. MOONEY: It sounds like the close of fact
6 discovery, we understand it to be July 13th.

7 THE COURT: Okay. That's fine.

8 MR. LANDES: Okay. So we will probably then have
9 to -- and we can do this -- confer with counsel and agree on,
10 you know, lead-up dates. Here's when fact discovery closes.
11 Here's when opening experts reports are due. Here's the
12 expert deposition procedure. We will just need to --

13 THE COURT: Right. Because that needs to be done
14 within the time to allow --

15 MR. LANDES: Right.

16 THE COURT: -- completion of that.

17 MR. LANDES: Exactly. So we can certainly confer on
18 that.

19 MR. MOONEY: We agree with that except, Your Honor,
20 the close of fact discovery is July 13th, so we can talk about
21 dates around that.

22 THE COURT: Right.

23 MR. LANDES: Oh, I'm sorry. So I'm not clear now.

24 THE COURT: And experts after?

25 MR. LANDES: Close of fact discovery July 13th.

1 MR. MOONEY: Right.

2 MR. LANDES: Understood. Because the order says, I
3 think, close of all discovery, and that was my confusion.

4 THE COURT: I have not looked at it. Let me look.

5 MR. LANDES: Your Honor, I think the -- if -- and
6 I -- I think Mr. Mooney and I and our respective teams can
7 confer about this and maybe we just submit a proposed
8 stipulation.

9 THE COURT: That's fine.

10 MR. MOONEY: That's fine with us, Your Honor.

11 THE COURT: Okay. That's fine. But typically fact
12 discovery would close and then expert discovery would follow.

13 MR. LANDES: Got it. Okay.

14 MR. FOX: Yes, Your Honor.

15 MR. LANDES: That might have been a misunderstanding
16 on our part.

17 THE COURT: The only thing I would say is if you want
18 an extension of discovery, ask for an extension of discovery
19 ahead of time. And tell me the new dates that you want for
20 everything. Don't agree amongst yourselves that discovery
21 will close X, okay? Don't do that.

22 Because that will inevitably not occur and then, you
23 know, I'll be in the spot where I didn't agree to something
24 and y'all did. So don't do that.

25 Okay?

1 And remember where you get squoze with experts if you
2 extend facts, okay? All right.

3 MR. LANDES: Yes.

4 MR. MOONEY: Yes, sir.

5 THE COURT: Anything else?

6 MR. FOX: Nothing else.

7 MR. MOONEY: Not from plaintiff, Your Honor.

8 THE COURT: Do you know Alex Spiro?

9 MR. LANDES: I do. I do know him. He's in our
10 New York office, although he's been spending more time in
11 Miami lately, but he's -- he's had a busy few years, as you
12 might imagine.

13 THE COURT: What is he doing in Miami? I don't know
14 what he's doing down there.

15 MR. LANDES: He's being a lawyer, but maybe he's also
16 surfing on the weekends, I don't know.

17 THE COURT: Does he have a big case down there?

18 MR. MOONEY: Oh, no. I think he just likes Miami.
19 We had a pretty fair contingent of Quinn Emanuel lawyers head
20 down to Miami. It was Miami and Utah, I think, where people
21 went to when offices in New York started closing and you
22 realize maybe it's not worth being up here if the restaurants
23 are closed.

24 THE COURT: Well, my last trial was in Connecticut in
25 a securities fraud case, and Alex tried the case with me.

1 MR. LANDES: Oh.

2 THE COURT: He was still on his own then or maybe he
3 was associated with another criminal defense lawyer. He
4 wasn't at Quinn yet.

5 MR. LANDES: Yeah. Ms. Thompson, who is on our team,
6 she's actually up in San Francisco right now starting a trial
7 with Mr. Spiro.

8 THE COURT: Yes?

9 MR. LANDES: Yeah, it's the funding secured Elon Musk
10 tweet case.

11 THE COURT: Oh, right. Yes.

12 MR. LANDES: So it should be -- I'm sure you'll be
13 reading about it in the news.

14 THE COURT: Well, if she wants some advice about how
15 to deal with Mr. Spiro at trial.

16 MR. LANDES: That's probably a long book, Your Honor.

17 THE COURT: I would be happy to talk to her. He's a
18 good lawyer, but sometimes at trial you just want to sit back
19 and do nothing, you know.

20 MR. LANDES: Until the verdict and then --

21 THE COURT: Alex is not one to do nothing. So
22 sometimes it's like wait --

23 MR. LANDES: That's one way to put it, Your Honor.

24 THE COURT: -- why are we crossing this guy? He's
25 not even talking about our defendant. But at any rate, I

1 really like Alex. He's obviously been very successful. And
2 he's a very loyal person, too.

3 MR. LANDES: I will pass that along, Your Honor.

4 THE COURT: We had a young client, it was a very
5 difficult case, he was accused of big bad fraud, we had about
6 maybe a six-week trial and, you know, the bond between Alex
7 and our client was something else.

8 MR. LANDES: He has some sort of special knack that I
9 think is unique.

10 THE COURT: Yes.

11 MR. LANDES: And the amount of trust that clients put
12 in him is pretty remarkable.

13 THE COURT: Yes. Our client was acquitted. I got
14 mad at our client, because the jury was out for about a week,
15 and the day before, he and Alex went to go play basketball,
16 and I thought that was bad mojo. But Alex, I mean, you know,
17 he --

18 MR. LANDES: I'm sure it's something.

19 THE COURT: Yes. It was a good time. At any rate.
20 All right. Thank you-all very much.

21

22 (Whereupon, the proceedings were adjourned at 12:16
23 p.m.)

24

25

REPORTERS CERTIFICATE

I, Jana B. Colter, Official Court Reporter for the United States District Court for the Northern District of Georgia, with offices at Atlanta, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on January 11, 2023, in the matter of *RoadSync, Inc. v. Relay Payments, Inc.*, Case Number 1:21-CV-03420-MLB; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (98 Pages) is a true and accurate record of the proceedings.

This the 12th day of January, 2023.

/s/ Jana B. Colter, FAPR, RDR, CRR, CRC
Official Court Reporter